



COMPENDIUM ON COMPENSATORY RELIEF TO THE VICTIMS OF CRIME IN CRIMINAL JUSTICE SYSTEM

JHARKHAND STATE LEGAL SERVICES AUTHORITY

This Reading Material is also available at the official website of JHALSA (www.jhalsa.org)

Year of Publication : **January, 2016**

For Private Circulation Only



Compendium
on
Compensatory Relief to the Victims of
Crime in Criminal Justice System

Printed & Distributed by :
Jharkhand State Legal Services Authority (JHALSA)
NYAYA SADAN, Near A.G. Office, Doranda, Ranchi
Phone : 0651-2481520, Fax : 0651-2482397
Email : jhalsaranchi@gmail.com, Website : www.jhalsa.org

Contents

ARTICLES

1. **Rights of Victims in the Indian Criminal Justice System** 19
S. Muralidhan
2. **Compensation to the Victim: Role of SLISA**..... 31
Prakash D.
3. **An Analysis of The Vanishing Point of Indian Victim Compensation Law** 41
Jhalak Kakkar and Shruti Ojha
4. **Compensation and Rehabilitation of Rape Survivors A Constitutional Right** 57
Mukesh Yadav, Pramendra Singh Thakur, Pooja Rastogi
5. **Compensation to Victims: A Study With Special Reference To S. 357 Of The Code Of Criminal Procedure, 1973**..... 71
Rajesh Suman

SCHEMES

6. **Central Victim Compensation Fund Scheme (CVCF) Guidelines** 73
7. **Jharkhand Victim Compensation Scheme, 2012** 80
8. **Jharkhand Acid Attack Victim Compensation Scheme, 2012**..... 83
9. **झारखण्ड पीड़ित कल्याण अधिकोज्ञ नियमावली, 2014** 84
10. **झारखण्ड सरकार, गृह विभाग, अधिसूचना** 86
11. **Jharkhand Victim Welfare Fund Rules, 2014** 90
12. **Jharkhand Naxal Victim Compensation Scheme** 91

CASE LAWS

13. **Ankush Shivaji Gaikwad Vs. State of Maharashtra**..... 95
Criminal Appeal No. 689 OF 2013
Coram: (T. S Thakur and Gyan Sudha Misra, JJ.)
14. **Manohar Singh Vs. State of Rajasthan and Ors**..... 115
Criminal Appeal No. 99 OF 2015
Coram: (T. S. Thakur, Adarsh Kumar Goel, JJ)
15. **Suresh & Anr. Vs. State of Haryana** 125
Criminal Appeal No. 420 OF 2012
Coram : (V. Gopala Gowda, Adarsh Kumar Goel, JJ)
16. **Parivartan Kendra v/s Union of India and others** 143
Writ Petition (Civil) No. 867 Of 2013
Coram : (M.Y. Eqbal, C. Nagappan, JJ)
17. **Gopi Nath Ghosh Vs. The State of Jharkhand & Anr.** 153
W.P (PIL) No. 2584 Of 2011
Coram : (R. Banumathi, Apresh Kumar Singh, JJ)
18. **Dhanu Ram Soren @ Bali Ram Soren Vs. State of Jharkhand** 161
Criminal Appeal (D.B.) No.173 of 2013
Coram : (D.N. Patel, P.P. Bhatt, JJ)

Justice T.S. Thakur
Chief Justice of India



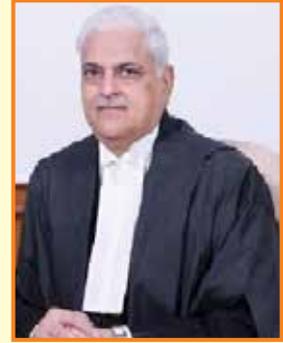
Message

A handwritten signature in blue ink, consisting of a vertical line on the left, a horizontal line across the middle, and a horizontal line extending to the right.

(Justice T.S. Thakur)

Justice Anil R. Dave

Judge, Supreme Court of India &
Executive Chairman, NALSA



“आ नो भद्राः क्रतवो यन्तु विश्वतः”

"Let noble thoughts come from all corners of this universe and fill my mind."

It gives me immense pleasure to know that Jharkhand State Legal Services Authority is going to publish a "**Compendium on Victim Compensation**" including articles, circulars, orders and case laws prepared by Jharkhand State Legal Services Authority (JHALSA), Ranchi.

The initial focus of Criminal Justice System was only on the aspect of punishment but the focus started shifting when the society encountered with the fact that the person who is victim of crime is getting nothing out of the whole process of Criminal Justice System.

The word '**Compensation**' in literal sense means a thing that compensates; specially money given to compensate loss or injury. The whole purpose of compensation is to make good the loss sustained by victim. We all know that the recent judgements of Hon'ble Supreme Court in **Ankush Shivaji Gaikwad vs. State of Maharashtra** AIR 2013 SC 2454 & **Suresh Vs. State of Haryana (2015) 2 SCC 227** have cast a duty on every Court to consider the case of grant of compensation.

The evolution of the concept can be traced where **Manu in Chapter VIII, Verse 287** clearly says that:

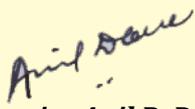
"If limb is injured, a wound is caused or blood flows, the assailant shall be made to pay the expense of the cure or the whole."

He further in **Verse 288** says that:

"He who damages the goods of another, be it intentionally or unintentionally, shall give to the owner a kind of fine equal to damage."

An unfortunate person who suffers from some adverse circumstances is known as 'Victim' and hence there must be proper sensitivity in all the stake holders for him/her. Delay in payment of compensation to the victim should be avoided at all costs. The Present State Level Colloquium on Victim-Emancipation through Compensation for Public Prosecutors, Lawyers, Legal Services Personnel, Police Officers, Judicial Officers, Executive Officials, Prison Officials shall definitely create a ripple effect down the line for effective implementation of Victim Compensation Scheme and Victim Welfare Fund. Both the works- Colloquium and the Compendium will equip the Judges and the Court Administrators for the challenges ahead.

JHALSA is doing a commendable work under the patronage of Hon'ble Mr. Justice Virender Singh, Chief Justice, High Court of Jharkhand-cum-Patron in Chief, JHALSA and the able guidance of Justice D.N. Patel, Executive Chairman, JHALSA. I wish all the best for the Colloquium and very happy New Year for everyone.


(Justice Anil R. Dave)

Justice Virender Singh

Chief Justice, High Court of Jharkhand cum
Patron-in-Chief, JHALSA



‘‘तेजस्वि नावधीतमस्तु’’

"MAY OUR KNOWLEDGE BECOME BRILLIANT"

Victim's compensation has always been the weeping beggar at the door of criminal justice. Although it is an age old concept, but its development on more scientific lines and also as branch of criminology has begun since a few decades ago. In India, there are different statutory provisions in criminal justice under which the compensation can be awarded to the victim of the crime viz. Fatal Accidents Act 1855, Probation of Offenders Act 1958, POCSO Act and Code of Criminal Procedure 1973.

More than three decades back Hon'ble Mr. Justice Krishna Iyer speaking for the Apex Court in **Maru Ram & Ors. Vs Union of India & Ors (1981) 1 SCC 107**, had said that while social responsibility of the criminal to restore the loss or heal the injury is a part of the punitive exercise, the length of the prison term is no reparation to the crippled or bereaved but is futility compounded with cruelty and victimology must find fulfillment not through barbarity but by compulsory recoupment by the wrong doer of the damage inflicted not by giving more pain to the offender but by lessening the loss of the forlorn. While taking cognizance of several cases related to compensation, the Apex Court has observed in **Ankush Shivaji Gaikwad Vs State of Maharashtra(2013) 6 SCC 770** that there exists a mandatory duty on the Court to apply its mind to the question of compensation in every criminal case. Similarly, in **Suresh Vs. State of Haryana (2015) 2 SCC 227**, the Apex Court held that every criminal court is under obligation to consider the case of grant of interim compensation after taking cognizance into the matter.

The principles of victimology has foundations in Indian Constitutional Jurisprudence. The provision of Fundamental Rights (Part III) and Directive Principles of State Policy (Part IV) form the bulwark for a new social order in which social and economic justice would blossom in the national life of

the country (Article 38). Article 41 mandates, inter-alia, that the State shall make effective provisions for securing the right to public assistance in case of disablement and in other cases of undeserved want.

Nowadays, compensation to victim does not only depend on conviction of the perpetrator of crime in terms of section 357 Cr.P.C. but the amended provision 357 A Cr.P.C. has paved a new path also to compensate victim on order of discharge or acquittal as well as in case where offender is not traced. Section 357 C Cr.P.C. also provides immediate free medical treatment to the rape victim or victim of acid attack.

The Colloquium on "**Victim - Emancipation through Compensation**" will be a great opportunity for deliberation on the topic, by which all the stakeholders shall be sensitized for the effective implementation of the provisions of law related to compensation. Jharkhand State Legal Services Authority (**JHALSA**) is doing commendable work in publishing this "**Compendium on Victim Compensation**". I express my sincere gratitude to His Lordship **Hon'ble Mr. Justice Anil R. Dave**, Judge, Supreme Court of India and Executive Chairman, NALSA and Brother Justice Vineet Saran, Judge, High Court of Karnataka to grace the Colloquium, which will be a great motivating factor for all of us. I appreciate the endeavour made by Brother Justice D.N. Patel, Executive Chairman, **JHALSA** for organizing this academic seminar, which is very relevant in the present situation.



(Virender Singh)

Justice Vineet Saran

High Court of Karnataka



I am extremely happy to know that the Jharkhand State Legal Services Authority is organizing a State Level Colloquium on "Victim - Emancipation through Compensation" on 23rd January, 2016 (Saturday) at Nyaya Sadan, Ranchi (Jharkhand) and on this occasion a compendium on Compensatory Relief to Victims of Crime is going to be published comprising relevant schemes, circulars, Important Judgments, Articles, etc.

Recently, the emergence of concept of restorative justice is a paradigm shift in dispensation of criminal justice by involving the offender, the victim and community as a whole to ensure a balance between offender's punishment and protection of victim's right.

The role of Courts and Judges, the Executive Officials, Police Officials, Jail Superintendents, Probation Officers and other Stake Holders of the Criminal Justice System, including the members of Legal Services Institutions in safeguarding the rights of the victim of crime is very important. The protection of victim's right is an indispensable part of the modern sentencing system, though apparently it refers to the accused who perpetrates the crime.

Section 357 of Cr.PC explicitly makes provisions with respect to payment of compensation, but the Courts have seldom invoked it. Further, a new Section 357A, Victim Compensation Scheme inserted in the Code of Criminal Procedure 1973 envisages a Comprehensive Victim Compensation Scheme in recognition to right of the victim of crime to compensatory justice. There is a need to implement these provisions of law and therefore, this Colloquium will certainly help in achieving the same.

I sincerely find a clarion message on this issue with the kind consent of His Lordship Hon'ble Mr Justice Anil R Dave to inaugurate the Colloquium. I express my deep gratitude to Hon'ble Justice Virender Singh, Chief Justice of High Court of Jharkhand and brother Justice D N Patel, Executive Chairman, Jharkhand State Legal Services Authority (JHALSA) for inviting me to attend the colloquium on a very relevant issue i.e., compensation to Victim of Crime, organized in the State of Jharkhand.

I wish the Colloquium a grand success.

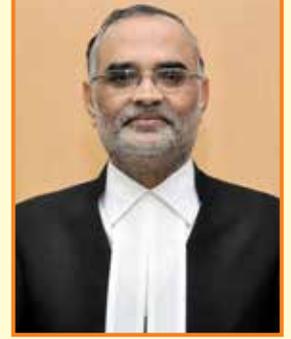


(Vineet Saran)

From the Pen of Executive Chairman.

Justice D.N. Patel

*Judge, High Court of Jharkhand &
Executive Chairman, JHALSA*



Justice implies scrupulous adherence to the Rule of Law- and, therefore, it is for the State to promote justice on the basis of equal opportunities for peaceful co-existence. It would be futile attempt to give any definition to the word Justice. It can only be explained and accordingly the Hon'ble Supreme Court of India appreciated meanings of Justice in tune with Dharma as reflected in "Ramesh Yeshwant Prabhu v/s. P.K. Kunte, AIR 1996, SC 1113 as under:

धारणाद् धर्म इत्याहुर्धर्मो धारयते प्रजाः ।
यत् स्याद् धारणसंयुक्तं स धर्म इति निश्चयः ॥

**"Justice is that which upholds,
Nourishes or supports the stability
of the Society,
Maintains social order and
secures the general well being and
progress of mankind"**

Supreme Court of India

The concept of Justice in the Criminal Justice System is no longer confined to accused alone; it is true for all the victims of a crime. I am delighted to place in your hand the compendium of articles, circular orders, and case laws on Victim Compensation. VICTIMS are unfortunately the forgotten people in criminal justice delivery system. The Criminal Justice System tends to think more of rights of offender than that of relief to victims. Justice remains incomplete without adequate compensation to victim. Justice can be completed only when victim is compensated. The amendment in Code Of Criminal Procedure (1973) whereby section 357(A-C) of CrPc was added providing for the victim compensation scheme and it came into effect from 31.12.2009, have cast a responsibility on Court and Legal Services Authority to ensure grant of compensation to the victim, pursuant there to almost all the states have formulated their Victim Compensation Scheme.

In the case of **Ankush Shivaji Gaikward vs. State of Maharashtra (2013)6 SCC 770**, Hon'ble Apex Court has held as follows :-

"Section 357 CrPC confers a duty on the court to apply its mind to the question of compensation in every criminal case. It necessarily follows that the court must disclose that it has applied its mind to this question in every criminal case."

Further Supreme Court while developing law for Victim Compensation, in the case of **Suresh vs State of Haryana Cr.Appeal No. 420 of 2012. (2015) 2 SCC 227**, has cast a duty on every court to consider the case of grant of Interim Compensation after taking cognizance in the matter.

Our Jharkhand is a new state with a population of 3,29,88,0134 and out of which 28% population consist of ST and 12 % of SC who are largest number of victims in criminal matter.

It was decided to hold this seminar of one day to sensitise all the stake holders, and on this occasion this compendium for the benefit of all stake holders and particularly ignorant citizens in general is released.

More often than not, despite the categorical introduction of Victim Compensation Provisions like Jharkhand Victim Compensation Scheme, 2012, Jharkhand Welfare Fund Rules, 2014, POCSO, Acid Attack, Naxal Violence, Central Victim Compensation Fund Scheme Guidelines, the quest for victim's Justice is long way to go. Therefore in order to sensitise all the stakeholders to invoke such provisions, **Jharkhand State Legal Services Authority (JHALSA)** has proposed a State Level Colloquium on "**Victim- Emancipation through Compensation**" on 23rd January, 2016 under its constitutional obligation for disseminating "Legal Awareness and Legal Access". vide Art. 39 A of the Constitution of India to promote Justice on equal footing

We are grateful to His Lordship **Hon'ble Mr. Justice Anil R. Dave**, Judge, Supreme Court of India and Executive Chairman, National Legal Services Authority (NALSA), **Hon'ble Mr. Justice Virender Singh**, Chief Justice, Jharkhand High Court cum Patron-in-Chief, JHALSA and **Hon'ble Mr. Justice Vineet Saran**, Judge, High Court of Karnataka and my Esteemed brother Judges, who have been kind enough to share their input to uphold principles of Law of Criminal Justice System related to Victim Compensation.

In an Institution like ours, it takes collective effort of cooperation and coordination to achieve success and everyone has a role to play – Judges, Executive Officials, Police Personnels, Lawyers, Mediators, Civil Society Organisations, Para Legal Volunteers, Stakeholders of the Juvenile Justice System and others.

I take this opportunity to share the accomplishment and glimpse of varied meaningful events organized by Jharkhand State Legal Services Authority (JHALSA) to achieve "easy access to justice" for the weaker and marginalized sections of the Society including women, children, widow, senior citizen,

differently abled persons, prisoners, tribal people, victims of drugs trafficking and commercial sexual exploitation along with the other vulnerable groups of the society. The last 12 months of the year 2015 has certainly been and incredibly busy and productive with much to celebrate

- ❖ A Best DLSA Award (Eastern Zone) to the DLSA Ranchi out of the 6 states including Bihar, West Bengal, Orissa, Jharkhand, Chhatisgarh and Uttar Pradesh.



- ❖ Prestigious All India Meet (13th All India Meet of State Legal Services Authorities), where a number of commendable Resolutions adopted.

Cherrypicks of the resolutions adopted in the 13th All India Meet at Ranchi on 21st and 22nd March, 2015 was pathbreaking initiative to reach out to :

- Tribal People
- Children
- Unorganized Workers
- Mentally ill Persons
- Drug Addicts
- Victims of Trafficking and Commercial Sexual Exploitation
- People entitled for benefits under Poverty Alleviation Scheme.



- ❖ Strengthening the Juvenile Justice System under which Child Care Institution is being connected with the Observation Home through Video Conferencing.
- ❖ Also organizing the State Level Colloquium on Commitment of State for Child in need of Care and Protection on 23rd August, 2015 at Ranchi.
- ❖ Resolution to rejuvenate Juvenile Justice System through "**Ranchi Declaration**".



- ❖ **Systematic promotion of ADR Mechanism particularly MEDIATION** : by introducing Intensive Training such as Convention cum Advance Training Course at Dumka on 26th-27th September, 2015.



- ❖ **20 Hours Capsule Training Course** at Bokaro on 29th November to 1st December, 2015 and at Ranchi on 19th -21st December, 2015



And also participation of **Regional Conference on Mediation at Cuttack** on 31st October to 1st November, 2015 with an average rate of disposal in the Mediation Centre through Mediation is 45%.

Total No. Of Cases referred	Total No. Of Cases Settled	Total No. Of Cases Unsettled	% of success
7704	2044	2506	45% (Approx)



- ❖ **Women Empowerment Workshop** like Protection of Women from Domestic Violence on 18/01/15.
- ❖ And a Zonal **Training for Empanelled Legal Services Lawyers** and PLVs on Violence against Women and Children for the 3 Districts namely; Jamshedpur, Chaibasa, Seraikela- Kharsavan at Jamshedpur on 19th – 20th of September, 2015.
- ❖ **Opening of Legal Aid Clinics in Adoption Centre** in Sahyog Village Premises in Dugdugiya in the District of Khunti on 24th January, 2015.
- ❖ **Legal Services Clubs at Schools** and Colleges including DPS at Ranchi.



- ❖ **Face Lift of Observation Home** and Children Home at Jamshedpur on 15/04/15.
- ❖ Seminar on Poverty Alleviation Schemes including workers of unorganized sectors with the members of Judiciary and Executive on and Inauguration of LED Display Board 16/05/15.



- ❖ **Training of PLVs under NALSA revised scheme** organized at Ranchi and Koderma on 17-21 June and 21 – 25 July respectively



- ❖ **Inauguration of of ADR Centre (Zila Nyaya Sadan)** at Koderma on 25th July, 2015
- ❖ Successful organization of **National Lok Adalat** across the State on 12.12.2015
- ❖ Constitution of 7 team members for each **7 schemes of NALSA** launched recently by adopting the Standard Operating Procedure (SOP) and Training Module.



It is quite a herculean task to summarize the happenings of buzzing Legal Services Institution like JHALSA in one volume and we can only give readers a small taste of all that has taken place. We hope that we have captured the spirit of the Easy Access to Justice for the marginalized and vulnerable group of the society and foregoing events carry messages of the

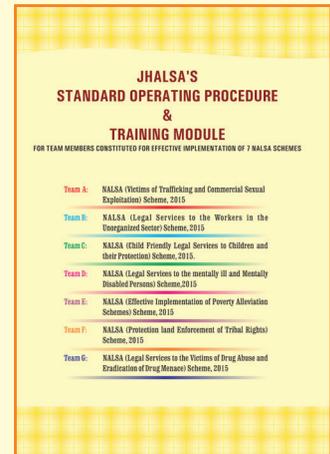
Apex Body- NALSA to achieve the aspirations and goals as enshrined in the Constitution: Justice- Social, Economic and Political.

All this has been made possible due to team effort of all the stakeholders who are at the helm of affairs to whom I am very thankful as we continue on our journey to become crusader of constitutional goal in elevating holistic justice on basis of equal opportunity for the poor and weaker sections of the Society.

“Success come to those who work hard, and stays with those who donot rest on laurels of the past”.

The most important obligation of our Institution is to ensure the rights to the needy and poor and to make them aware about their entitlements to pursue their rights under Rule of Law.

We assure you once again that JHALSA under the patronage of NALSA shall leave no stone unturned in our endeavour to promote justice on the basis of equal opportunities. After all no one can excel in the efforts to uphold the constitution and law and to fulfill the aspirations for achieving justice to the needy, poor and ignorant without undying love for it.



(Signature)
(D. N. Patel)

Justice R.R. Prasad
*Judge, High Court of Jharkhand &
Chairman, HCLSC*



Message

(Justice R.R. Prasad)

ARTICLES

Rights of Victims in the Indian Criminal Justice System

S. Muralidhan

I. Introduction

The adoption by the General Assembly of the United Nations, at its 96th plenary on November 29, 1985 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (hereafter 'U.N. Declaration') constituted an important recognition of the need to set norms and minimum standards in international law for the protection of victims of crime. The U.N. Declaration recognised four major components of the rights of victims of crime - access to justice and fair treatment;¹ restitution;² compensation³ and assistance.⁴ In the first part of this piece it is proposed to examine how far the prevailing legal framework in India conforms to the norms and standards that were sought to be set by the U.N. Declaration nearly two decades ago.⁵ It also notices relevant judicial dicta that have sought to address the needs of the victims of crime. In the second part the prevailing international trends and recent local developments are briefly noticed. The concluding part offers certain suggestions as regards the nature of the changes that are required in order to make the system respond effectively to the needs of victims of crime.

II. Access to Justice and Fair Treatment

The victim of a crime sets the criminal justice mechanism in motion by giving information to the police which is expected to reduce it to writing.⁶ The victim as an informant is entitled to a copy of the FIR "forthwith, free of cost".⁷ Where the officer in charge of a police station refuses to act upon such information, the victim can write to the Superintendent of the Police who is then expected to direct investigation into the complaint.⁸ Failing these mechanisms, the victim can give a complaint to a Magistrate,⁹ who will in turn examine the complainant on oath and enquire into the case herself or direct investigation by the police before taking cognizance.¹⁰ The victim thereafter does not participate in the investigation except by being called to confirm the identity of the accused¹¹ or the material objects, if any, recovered during the course of investigation.

The position of victims who happen to be women or children has not merited the attention it deserves in the procedural statute. The protection under s. 160 Cr. PC that "no male person under the age of 15 years or women shall be required to attend any place other than the place in which such male person or woman resides" does not apply to a woman or a child who is picked up as a suspect.¹² The plight of rape victims is compounded by their being held in 'protective custody' in jails or in the nari nicketans (women's shelters), on the pretext that they are required for giving evidence although such detention has no legal basis.¹³

The law's response to the needs of victims of rape and other violent crimes against women has been both predictable and inadequate. In imposing severe and minimum punishments¹⁴ for the offence and in shifting the burden of proof,¹⁵ the law fails to address the needs of the victim to be treated with dignity, to sustained protection from intimidation, to readily access the justice mechanisms, to legal aid and to rehabilitation. There is yet no provision in the law mandating 'in-camera' trials particularly when the victim is a child.¹⁶ There is also no statutory scheme recognising the rehabilitative needs of the victims of rape.¹⁷ The legislative and executive apathy to the problem stands in contrast with the response of the Supreme Court in Delhi Domestic

Working Women's 'Forum v. Union of India.¹⁸ The case arose out of an incident in which six women, working as domestic servants in Delhi, were raped by eight army personnel in a moving train between Ranchi and Delhi. The members of the petitioner forum, when prevented by the employers from meeting the victims, sought the court's directions for expeditious and impartial investigation of the offences. The court indicated the following "broad parameters for assisting the victims of rape":¹⁹

- ❖ The complainants in sexual assault cases had to be provided with legal representation. It was important to have someone well acquainted with the criminal justice system. The role of the victim's advocate would not only be to explain to the victim the nature of the proceedings, to prepare her for the case and to assist her in the police station and in court but to provide her with guidance as to how she might obtain help of a different nature from other agencies, for example, mind counselling or medical assistance. It was important to secure continuity of assistance by ensuring that the same person who looked after the complainant's interests in the police station represented her till the end of the case.
- ❖ Legal assistance would have to be provided at the police station since the victim of sexual assault might very well be in a distressed state upon arrival at the police station; the guidance and support of a lawyer at this stage and whilst she was being questioned would be of great assistance to her.
- ❖ The police was under a duty to inform the victim of her right to representation before any questions were asked of her and the police report should state that the victim was so informed.
- ❖ A list of advocates willing to act in these cases should be kept at the police station for victims who did not have a particular lawyer in mind or whose own lawyer was unavailable. An advocate would be appointed by the court, upon application by the police at the earliest convenient moment, but in order to ensure that victims were questioned without undue delay, advocates would be authorised to act at the police station before leave of the court was sought or obtained.²⁰

The victim has a say in the grant of bail to an accused. S. 439 (2) Cr.PC, as interpreted by the courts, recognises the right of the complainant or any "aggrieved party" to move the High Court or the Court of Sessions for cancellation of a bail granted to the accused.²¹ A closure report by the prosecution cannot be accepted by the court without hearing the informant.²² Also, compounding of an offence cannot possibly happen without the participation of the complainant.²³ In *S.A. Karim v. State of Karnataka*²⁴ the Supreme Court acted on the plea of the father of a policeman killed by a dreaded forest brigand and set aside the order of the trial judge that had allowed the prayer of the State for withdrawal of prosecution.²⁵

While the victim of a crime may move the government to appoint a special prosecutor for a given case,²⁶ there is no scope under the Cr.PC for the victim or informant or her lawyer to directly participate in the trial. S. 301 (2) Cr.PC mandates that such lawyer of the private party "shall act under the directions of the Public Prosecutor... and may, with the permission of the court, submit written arguments after the evidence is closed in the case." Further, though there is no provision in the Cr.PC for providing legal aid to the victim of a crime,²⁷ S. 12 (1) of the Legal Services Authorities Act, 1987 (LSAA) entitles every person "who has to file or defend a case" to

legal services. A victim of crime has a right to legal assistance at every stage of the case subject to the fulfillment of the means test and the 'prima facie case' criteria.²⁸

The Cr. PC also does not effectively address the growing menace of intimidation of victims of witnesses during the pendency of trial at the instance of the accused and other vested interests.²⁹ Even the few provisions that exist are not creatively used for meeting the challenge.³⁰ Recently the Supreme Court took judicial notice of the fact that "the conviction rate has gone down to 39.6% and the trial in most of the sensational cases do not start till the witnesses are won over"³¹ One response is to get the court trying the case to hold sittings in camera or shift the venue of the trial to a safer place in the interests of ensuring a fair trial.³² The other, and a less frequently invoked option, is to seek a transfer of the trial to another state by petitioning the Supreme Court under s.406 Cr.PC. In *G.X. Francis v. Banke Bihari Singh*,³³ the Supreme Court transferred the trial of a criminal defamation case filed against Christians by a non-Christian from a court in Madhya Pradesh, where the atmosphere was palpably hostile, to one in the neighbouring state of Orissa. The judgment of Vivien Bose J's explained the grounds for transfer thus:³⁴ "In a case of defamation against Christians by a non-Christian, bitterness of local communal feeling and the tenseness of the atmosphere afford good grounds for transfer under this section. Public conference in the fairness of trial held in such an atmosphere would be seriously undermined, particularly among reasonable Christians all over India, not because the judge was unfair or biased but because the machinery of justice is not geared to work in the midst of such conditions".

The victim's right of participation in the post-trial stage of the proceedings stands on a better footing. An appeal against an order of acquittal can be preferred, with the prior leave of the High Court, by both the State Government³⁵ and the complainant.³⁶ The right of a victim's near relative, who was not a party to the proceedings, to file a Special Leave Petition under Article 136 of the Constitution in the Supreme Court challenging an order of acquittal by the High Court was expressly recognised by a Constitution Bench in *P.S.R. Sadhanantham v. Arunachalam*³⁷ Telescoping the requirement of fair procedure implicit in Article 21 into Article 136, the court declared:³⁸ "When a motion is made for leave to appeal against an acquittal, this court appreciates the gravity of the peril to personal liberty involved in that proceeding. It is fair to assume that while considering the petition under Article 136 the court will pay attention to the question of liberty, the person who seeks such leave from the court, his motive and his locus standi and the weighty factors which persuade the court to grant special leave."³⁹

III. Restitution

The right of a victim of crime to restitution has not yet merited statutory recognition. In this area, the constitutional courts have been inclined to examine the plea of victims for redressal of the losses suffered during violent incidents including riots and caste clashes. The principle that is evoked is that of 'culpable inaction' under which the state and its agencies are expected to anticipate the losses or damage to public and private property in certain situations over which the potential victims have no control. The courts have gone as far as to find the state liable only where a definite failure on its part act has resulted in the loss.⁴⁰ The outbreak of riots in the wake of the assassination of the Prime Minister in October 1984, resulted in large-scale damage to the properties of members of the Sikh community in several places of the country. In *R. Gandhi v. Union of India*⁴¹ the Madras High Court, acting on the report of a commissioner appointed by it to assess the losses, directed payment of varying amounts of compensation for

the losses to property of the Sikh community in Coimbatore. However, in *Sri Lakshmi Agencies v. Government of Andhra Pradesh*⁴² the Andhra Pradesh High Court declined to accept the prayer for compensation to the loss of life, injury, destruction and loss of property as a result of the violence that followed the murder of a sitting member of the legislative assembly. The court explained that:⁴³ “it is only when the officers of the state do any act positively or fail to act as contemplated under law leading to culpable inaction, that the state is liable to pay the damages. There should be a direct nexus for the damage suffered on account of state action and if that is absent, Article 21 of the Indian Constitution is totally inapplicable”.⁴⁴ This is a still evolving area in which the courts are seen to be treading cautiously.⁴⁵

IV. Compensation and Assistance

The right of a victim of crime to receive compensation was recognised even under the Code of Criminal Procedure, 1898⁴⁶ but was available only where a substantive sentence of fine was imposed and was limited to the amount of fine actually realised. S.357 (3), Cr. PC 1973 permits the grant of compensation even where the accused is not sentenced to fine.⁴⁷ However, this provision is invoked sparingly and inconsistently by the courts.⁴⁸

The 152nd Report of the Law Commission had recommended the introduction of S.357-A prescribing inter alia that compensation be awarded at the time of sentencing to the victims of the crime - Rs.25,000/- in the case of bodily injury, not resulting in death; Rs. 1,00,000/- in the case of death.⁴⁹ The 154th Report of the Law Commission of India noticed that its earlier recommendation had still not been given effect to by the government. It went one step further and recommended that it was necessary to incorporate “a new S.357-A in the Code to provide for a comprehensive scheme of payment of compensation for all victims fairly and adequately by the courts. Heads of compensation are for (i) for injury, ii) for any loss or damage to the property of the claimant which occurred in the course of his/ her sustaining the injury and (iii) in case of death from injury resulting in loss of support to dependants”.⁵⁰ This recommendation also has not been acted upon by the government.

Absent a viable, effective statutory regime for compensation, the courts in their constitutional law jurisdiction have had to forge new tools to give effect to the right of victims of crime to be compensated.⁵¹ In the *Delhi Domestic Working Women Forum Case*, the court directed payment of Rs. 10,000 as ex gratia to each of the victims.⁵² In *Gudalure M.J. Cherian v. Union of India*⁵³ the State of U.R was directed to pay a sum of Rs. 2,50,000/- as compensation to two Sisters on whom rape had been committed by unidentified assailants. The question of payment of compensation to victims of crime from the wages of prison labour came up for consideration in *State of Gujarat v. Hon 'ble High Court of Gujarat*⁵⁴ The court recommended that the State should make a law “for setting apart a portion of the wages earned by the prisoners to be paid as compensation to deserving victims of the offence, the commission of which entailed the sentence of imprisonment to the prisoner, either directly or through a common fund to be created for this purpose or in another feasible mode”.⁵⁵

V. Victims of Custodial Crimes

The constitutional right of a victim of custodial crime to receive compensation was reiterated by the Supreme Court in *Nilabati Behera v. State of Orissa*.⁵⁶ The court pointed out that it was not enough to relegate the heirs of a victim of custodial violence to the ordinary remedy of a civil suit. The right to get relief of compensation in public law from courts exercising their

writ jurisdiction was explicitly recognised. This was further developed in *D.K. Basu v. State of West Bengal*⁵⁷ where it was explained that “the award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the state... the relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them.”⁵⁸

In order to develop a comprehensive statutory scheme redressing the needs of victims of crime, it may be useful to examine some of the current practices elsewhere. The European Convention on Compensation of Victims of Violent Crime, 1983 provides for many of the rights recognised in the U.N. Declaration. The statutes on the topic in certain other countries include the Criminal Injuries Compensation Act, 1995 in the United Kingdom,⁵⁹ the Victims of Crime Assistance Act, 1996 of Victoria in Australia,⁶⁰ and the Victims and Witnesses Protection Act, 1982 of the USA⁶¹. Courts in some of these countries make use of a “victim impact statements” to take on board the victim’s feelings regarding the offence.⁶² Outside of the formal legal system, there are associations formed in some of the countries, which are central to the provision of all forms of the assistance to victims of crime.⁶³

South Africa has enacted a Witness Protection Act, 1998 (WPA) which provides, inter alia, for the establishment of a central office for witness protection, which will function under the control of the Minister of Justice and Constitutional Department. This office will be responsible for the protection of witnesses in terms of the WPA and regulations made in terms thereof, and will perform all duties relating to protection of witnesses.⁶⁴ It may be recalled that simultaneous with the making of the Constitution of South Africa, a Truth and Reconciliation Commission (TRC) was also established.⁶⁵ One of the key functions of the TRC was to examine the claims of victims of the apartheid regime to compensation⁶⁶ An important aspect of the functioning of the TRC, as explained by one of its members, Justice Albie Sachs, was to give the victim a voice and encourage a dialogue between the victim and the perpetrator. He explains that “if you are dealing with large episodes, the main concern is not punishment or due compensation after due process of law, but to have an understanding and acknowledgment by society of what happened so that the healing process can really start. Dialogue is the foundation of repair.”⁶⁷

The need for setting up separate victim and witness protection units in the trial of mass crimes has been acknowledged in the setting up of international tribunals to deal with them. The International Criminal Tribunal for Rwanda has formulated rules for protection of victims and witnesses.⁶⁸ Similar provisions exist in the Statute for the creation of an International Criminal Court (ICC).⁶⁹

Recent local developments require to be noticed. The notification of the Government of India constituting the Committee on Reforms of Criminal Justice System, chaired by Justice VS. Malimath (hereafter ‘Malimath Committee’) was uncharacteristically candid in its lamentation that “People by and large have lost confidence in the Criminal Justice System... Victims feel ignored and are crying for attention and justice...”⁷⁰ In its turn the Malimath Committee, after making extensive recommendations to ensure that “the system must focus on justice to victims”⁷¹, has concluded that “criminal justice administration will assume a new direction towards better and quicker justice once the rights of victims are recognised by law and restitution for loss of life, limb and property are provided for in the system.”⁷² While largely concurring with the recommendations of the Law Commission of India in relation to witness

protection the Malimath Committee concludes that “Time has come for a comprehensive law being enacted for protection of the witness and members of his family”⁷³

The government of the day, on August 14 2003, tabled in the Parliament the Criminal Law (Amendment) Bill, 2003 proposing a series of changes including the insertion of new Ss.164-A and 344-A in the Cr. PC to deal with the problem of witnesses turning hostile.⁷⁴ Further, S.195-A is proposed to be introduced in the Indian Penal Code making the threatening or inducing of any person to give false evidence a cognizable and non-bailable offence punishable with imprisonment for seven years or fine or both. This response of the government is not only ad hoc but also inadequate as it fails to address the whole range of issues raised by victims of crime.

VI. Conclusion

The brief review of the existing legal framework in relation to rights of victims of crime reveals that except in the area of providing compensation, very little has been done either statutorily or through schemes to address the entire range of problems faced by victims of crime. There is need to take a fresh look at the position in which the victim of a crime is placed in our criminal justice system.

The role of the victim of a crime in our criminal justice system, which follows the common law colonial tradition, is restricted to that of a witness in the prosecution of an offence. This stems from a negative perception of the victim of a crime as a person who has “suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights.”⁷⁵ Resultantly, the criminal justice system acquires a “vertical dimension” and becomes “a means of formal social control” by the state which takes over the prosecution of the offender to the exclusion of the victim⁷⁶ From a criminological and victimological perspective, these are “value laden judgmental labels that serve no useful research function and thus can be easily replaced by more neutral designations, such as ‘participants to the conflict’, ‘parties to the dispute’, ‘protagonists’ and so forth.”⁷⁷ This view advocates replacement of the vertical criminal justice system by a “horizontal line of justice” where the punishment system is sought to be substituted by a mediation system which gives a central role for the victim.⁷⁸ Our system however has persisted with the vertical dimension model.

The reorienting of the criminal justice system to address the needs of a victims of crime need not and perhaps should not be exclusive of the need to enforce and protect the rights of suspects as well as the rights of the accused. It should be possible to accommodate both requirements as has been done in countries like United Kingdom and the United States of America. To begin with it is essential to acknowledge that our legal system is not equipped at present to effectively deal with mass crimes, including the crimes of genocide and crimes against humanity.⁷⁹ The setting up of a witness and victim protection unit under the control of an independent and accountable agency by suitably modifying the available models, e.g., the one provided by the Statute for the creation of the ICC, becomes imperative. This ought to be built into the statutory legal framework itself.

Although the Malimath Committee has recommended that “the victim has a right to be represent by an advocate of his choice; provided that an advocate shall be provided at the cost of the state if the victim is not in a position to afford a lawyer”,⁸⁰ this fails to acknowledge that the present state of implementation of the statutory provisions concerning free legal aid in the criminal

justice system leaves much to be desired.⁸¹ The reform of the criminal justice system as a whole will have to be simultaneous with the reform of the legal aid system before a victim of crime can be guaranteed an effective right of representation in a criminal trial.

The limitation of the resources of the State in making adequate provision in the form of a victim assistance fund ought not to be countenanced any longer.⁸² The attempt at devising a statutory scheme of witness protection will have to be preceded by a wide range of consultations by the law making body with not only victims of crime but other statutory bodies like the National Human Rights Commission which are plagued with a rising number of complaints.⁸³ The approach would also have to be multi-disciplinary involving, inter alia, sociologists, law persons and professionals from the field of medicine. Given the endemic delays faced by litigants in the present legal system, it would be appropriate to develop alternative forms of dispute resolution without diluting the need for providing fair and equal justice to victims of crime. The U.N. Declaration continues to serve as a useful benchmark in reordering the criminal justice system to address the needs of victims of crime.

Endnotes

- 1 Clauses 4 and 5 of the U.N. Declaration read thus:

“4. Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.

5. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.”
- 2 This contemplates deprivations both by State and non-State actors. Under Clause 8 of the U.N. Declaration, restitution includes “the return of property of payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights.” Clause 11 provides that “where the government under whose authority the victimizing act or omission occurred is no longer in existence, the State or Government successor in title should provide restitution to the victims.”
- 3 Under Clause 12 of the U.N. Declaration the onus is on the state to “endeavour to provide financial compensation to both victims who have suffered bodily injury or impairment of physical or mental health as a result of serious crimes as well as the family of those who have died as a result of victimization.”
- 4 This includes “the necessary material, medical, psychological and social assistance through governmental, voluntary, community based and indigenous means” (Clause 14) Part B of the U.N. Declaration concerns victims of abuse of power “that do not yet constitute violations of national criminal laws but of internationally recognised norms relating to human rights.”
- 5 Though the U.N. Declaration may not have the binding effect of a Covenant, its clauses serve as useful benchmarks.
- 6 S.154 (1) of the Code of Criminal Procedure, 1973 (Cr. PC). This is registered as the (the first information report (FIR).
- 7 s.154 (2) Cr. PC.
- 8 S.154 (3)Cr.PC.
- 9 S.190Cr. PC.
- 10 S.200, 202 Cr. PC. The failure by a public servant to willfully neglect to act upon the complaint of member of the Scheduled Caste (SC) or scheduled Tribe (ST) is itself a punishable offence under s. 4 of the SC and ST (Prevention of Atrocities) Act, 1989C SC/ST Act’).
- 11 The evidence gathered by means of a test identification parade is relevant and admissible: S.9 Evidence Act 1872.
- 12 The Supreme Court emphasised the mandatory nature of this requirement in *Nandini Satpathy v. P.L.Dani* (1978) 2 SCC 424. The Rule that an arrest of woman should not be detained beyond sunset was evolved judicially: *Christian Community Welfare Council of India v. Government of Maharashtra* (1996) 1 Bom CR 70 but even this has been held not to be mandatory by the Supreme Court in *State of Maharashtra v. Christian Community Welfare Council of India* (2003) 8 SCC 546.

- 13 The practice of keeping victim women in jails for giving evidence was strongly deprecated in *Hussainara Khatoon v. State of Bihar* (1980) 1 SCC 93 (at 96) as “nothing short of a blatant violation of personal liberty guaranteed under Article 21 of the Constitution.”
- 14 S.376 (2) prescribes a minimum sentence of ten years and a maximum sentence of life imprisonment for certain severe forms of rape.
- 15 For e.g., S. 114 A, Evidence Act 1872 raises a presumption as to the absence of consent where the woman raped says in her evidence before the court that she did not consent. Recently some token amendments have been made recognising the need for preserving the dignity of the victim: S. 155 (4) Evidence Act 1872 which permitted the impeachment of the credibility of a prosecutrix by reference to her general “immoral character” now stands repealed. S. 228 A prohibits the disclosure of the identity of the victim in any publication concerning the offence.
- 16 An attempt is being made through a PIL in the Supreme Court (*Sakshi v. Union of India* (2001) 10 SCC 732) to get the legislature to remedy this lacuna.
- 17 Societal support to victims of sexual crimes is seldom available. From a victimological perspective, studies show that in sexual crimes against females and children of both sexes, the greater damage is often done by the reactions of others. This is termed as secondary victimization: Gerd Ferdinand Kirchhoff, “Victimology - History and Basic Concepts” in Kirchhoff et al (eds.) *International Debates of Victimology*, WSV Publishing (1994), at 51
- 18 (1995) 1 SCC 14.
- 19 *Supra* note 47 at 19-20.
- 20 The other parameters included the payment of compensation to victims of crime by the constitution of a Criminal Injuries Compensation Board. The National Commission for Women was asked to evolve a scheme for victims of rape. However, that is yet to come about. Meanwhile the incidents of crimes against women has shown a steady increase. From 1,21,265 in 1997 it had risen to 1,35,771 in 1999. Of these, torture constituted 32.4%, molestation 23.8%, kidnapping and abduction 11.7% and rape 11.7%. *Crime in India 1999*, National Crime Records Bureau (2001), 203.
- 21 *Puran v. Rambilas* (2001) 6 SCC 338 and *R.Rathinam v. State* (2000) 2 SCC 391.
- 22 *Union Public Service Commission v. S.Papiah* (1997) 7 SCC 614.
- 23 S.320 Cr.PC.
- 24 (2000) 8 SCC 710.
- 25 In *P. Ramachandra Rao v. State of Karnataka* (2002) 4 SCC 578, the Supreme Court reversed its earlier orders in *Common Cause v. Union of India* (1996) 4 SCC 33 and (1996) 6 SCC 775 permitting closure of petty criminal cases the trial in which had not commenced even after the lapse of two to three years after institution. The Court noted the concern expressed for the plight of the victims of crime who, if left without a remedy might “resort to taking revenge by unlawful means resulting in further increase in the crimes and criminals.” (ibid, at 596)
- 26 S.24 (8) Cr.PC. The trial of offences under the SC/ST Act is to take place in Special Courts (s.14) and for each such court a Special Prosecutor is required to be appointed (s. 15). Nevertheless the effective conviction rate for offences under this Act has been around 5%: See, *Crime in India 2000*, National Crime Records Bureau (2002), 184.
- 27 S.304 Cr.PC provides for legal aid only to the accused.
- 28 S. 12 (1) (h) and s. 13 (1) of the LSAA respectively. Under s. 12 (l)(b) every victim of trafficking in human beings or begar; under s. 12 (1) (e) every person under circumstances of undeserved want such as a “victim of a mass disaster, ethnic violence, caste atrocity..” is entitled to free legal services irrespective of the means test but subject to the prima facie case test.
- 29 The provisions that exist offer protection against intimidation by the police. S. 162 Cr. PC makes the statement made by a witness to the police during the course of investigation in admissible in evidence consistent with the statutory bar under s.25 Evidence Act, 1872. S.163 Cr. PC seeks to protect a witness against inducement threat or promise offered or made by “police officer or other person in authority”. S.171 Cr. PC mandates that “no complainant or witness on his way to any Court shall be required to accompany a police officer, or shall be subject to unnecessary restrained or inconvenience.”
- 30 S.284 Cr. PC provides that a witness can be directed by the court to be examined on commission thus dispensing with the need for such witness to attend the trial. In addition, where the court finds that the key prosecution witnesses have turned hostile it can under s.309 Cr. PC and for reasons to be recorded, postpone the trial. Also, under s.311 Cr. PC it can recall and re-examine a witness if “his evidence appears it to be essential to the just decision of the case”. However, these provisions are seldom used even when the court finds that the witness is under obvious threat and intimidation.

-
- 31 Order dated August 8, 2003 in W.P.(Crl.) No. 109/2003 (National Human Rights Commission v. State of Gujarat). The court also took note of the fact that "No law has yet been enacted, not even a scheme has been framed by the Union of India or by the State Government for giving protection to the witnesses." In a 1984 case from Calcutta, the entire trial was held vitiated because all the key witnesses had been won over. A re-trial was ordered by the Supreme Court: Sunil Kumar Pal v. Phota Sheikh (1984) 4 SCC 533.
- 32 S. 9(6) Cr.PC states: "The Court of Sessions shall ordinarily hold its sitting at such place or places as the High Court may, by notification, specify; but, if, in any particular case, the Court of Sessions is of opinion that it will tend to the general convenience of the parties and witnesses to hold its sittings at any other place in the Sessions Division, it may, with the consent of the prosecution and the accused, sit at that place for the disposal of the case or the examination of any witness or witnesses therein".
- 33 AIR 1958 SC 309.
- 34 Id. at 310.
- 35 S.378(l) read with s. 378 (3) Cr.PC.
- 36 S.378(4) Cr.PC.
- 37 (1980) 3 SCC 141.
- 38 Id. at 146
- 39 The judgment of Krishna Iyer, J., for the court was concurred with by Pathak, J. (as he then was) in a separate opinion who sought to restrict the right of a private party other than a complainant to file a special leave petition "in those case only where it is convinced that the public interest justifies an appeal against the acquittal and that the State has refrained from petition for special leave for reasons which do not bear on the public interest but are prompted by private influence, want of bona fide and other extraneous considerations."
- 40 For a detailed elucidation of this principle see Usha Ramanathan, **A Criminal Appraisal of the Laws Relating to Compensation for Personal Injury**, Thesis submitted to the Delhi University for degree of Doctor of Philosophy, September 2001, 246.
- 41 AIR 1989 Mad 205.
- 42 (1994) IAndhLT341.
- 43 Id. at 351.
- 44 See also Inder Puri General Store v. Union of India AIR 1992 J&K 11; Smt. Bhajan Kaur v. Delhi Administration, 1996 AHC 5644 and Noor Mohammad Usmanbhai Mansuri v. State of Gujarat (1997) 1 Guj LJ 49.
- 45 For cases where compensation for loss of property in riot like situations has been declined see State of J&K v. Jeet General Store AIR 1996 J&K 51; Smt. Char an Kaur v Chief Secretary, Orissa (1998) 85 Cutt LT 581 and Nathulal Jain v. State of Rajasthan, (1997) 2 ACJ 1271
- 46 S.545 (1 & 2) and s.546 Cr. PC 1898.
- 47 S.357 (3) "When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment order the accused person to pay, by way of compensation such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced."
- 48 In Hari Singh v. Sukhvir Singh (1988) 4 SCC 551, the Supreme Court had to exhort the criminal courts to use this provision since "this power was intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system". Recently, in Pamula Saraswathi v. State of A.P., (2003) 3 SCC 317, the Supreme Court, while affirming the conviction of the four assailants of the appellant's husband, directed them to pay a fine of Rs. 10,000/- each which was then directed to be paid to the appellant.
- 49 Law Commission of India, 152nd Report on Custodial Crimes (1994).
- 50 Law Commission of India, 154th Report on the Code of Criminal Procedure, 1973 1996, 63. The Law Commission took note of the existence of a Victim Assistance Fund that had been created in the State of Tamil Nadu.
- 51 The earliest of these cases was RudulSah v. State of Bihar (1983) 4 SCC 141. The inadequacy of the provisions in criminal law to deal with custodial torture is reflected in the judgment in State of M.P. v. Shyamsunder Trivedi (1995) 4 SCC 262.
- 52 Delhi Domestic Working Women's Forum v. National Commission for Women (1994) 3 SCALE 11.
- 53 (1995) Supp 3 SCC 3 87. This was notwithstanding the fact that the persons who had been arraigned as accused were found by the CBI not to be involved in the offence. The report pointed out grave lapses on the part of the investigating officers. See also Chairman Railway Board v. Chandrima Das (2000) 2 SCC 465.
-

- 54 (1998) 7 SCC 392.
- 55 The concurring judgment of Wadhwa J., however, opined that “any amount of compensation deducted from the wages of the prisoner and paid directly to the victim or his family may not be acceptable considering the psyche of the people in our country”.(at 435)
- 56 (1993) 2 SCC 746.
- 57 (1997) 1 SCC 416.
- 58 Id at 443. (emphasis in original) For a later decision of the Supreme Court reiterating the same principles, see State of A.P. v. Challa Ramakrishna Reddy (2000) 5 SCC 712.
- 59 The working of the Criminal Injuries Compensation Board in the United Kingdom has not been found to be satisfactory. A recent report titled “Criminal Justice: the Way Ahead” makes a key recommendation that “we will put the needs of victims and witnesses at the heart of the criminal justice system and ensure they see justice done more often and more quickly.”
- 60 Under s.3 of this Act, the family of the witness could also seek protection or other assistance.
- 61 Despite many states creating programmes responding the needs of victims of crime which include restitution by the offender, compensation by the state, assistance by government and private organisations and the promulgation of “bills of rights”, the actual implementation of these schemes appears to have not been adequate: See LeRoy L Lamborn “The Constitutionalisation of Victims’ Rights in the United States: The Rationale” in Kirchoff et al (eds.) International Debates of Victimology, WSV Publishing (1994), 280
- 62 Matti Joutsen, “Changing Victim Policy: International Dimensions” in Kirchoff et al (eds.) International Debates of Victimology, WSV Publishing (1994), 211 at 219
- 63 Among the prominent ones are the Weisser Ring established in Germany in 1977, the Scottish Association of Victim Support Schemes and the National Organisation for Victim Assistance in the USA.
- 64 Ss. 2 to 6.
- 65 The TRC was constituted under the Promotion of National Unity and Reconciliation Act, 1995.
- 66 S.23 of the 1995 Act constitutes a Committee on Reparation and Rehabilitation. The TRC has since submitted its final recommendations.
- 67 Albie Sachs. The Fourth D.T. Lakdawala Memorial lecture. “Post-Apartheid Africa: Truth, Reconciliation and Justice”. Institute of Social Sciences 37-38 (mimeo)
- 68 Article 21 of the Statute of ICTR provides for rules to be made for protection of victims and witnesses and further states that such rules shall not be limited to conducting an in-camera trial.
- 69 Article 68 of the Statute provides for ‘protection of the victims and witnesses and their participation in the proceedings’. Article 43(6) of the same Statute requires the Registrar of the ICC to set up a ‘victims and witnesses unit’ within the Registry which shall provide “protective measures and security arrangements, counselling and other appropriate assistance for witnesses, victims who appear before the Court, and others who are at risk on account of testimony given by such witnesses. The Unit shall include staff with expertise in trauma, including trauma related to crimes of sexual violence.”
- 70 Report of the Committee on Reforms of Criminal Justice System, Government of India Ministry of Home Affairs - Vol.1, March 2003 (hereinafter referred to as ‘the Malimath Committee Report’), 75.
- 71 Ibid at 210.
- 72 Ibid at 271.
- 73 Para 11.3, ibid at 152. The principal criticism of the Malimath Committee is that in its single-minded focus on shifting the system from being accused-centric, an assumption not borne out by any systematic empirical analysis, and in its over eagerness to make it address the needs of victims, it adopts the ‘either/or’ approach. It jettisons the principle of presumption of innocence which it views as a barrier to discovering the truth. Prof. Upendra Baxi criticism is that “Instead of doing any sustained empirical work bearing on so crucial a matter, the Report relies merely on ‘commonsense’ expressed ad nauseum injudicial reiteration of the maxim: ‘it is better that ten guilty persons may escape rather than one innocent person may suffer’”: Prof. Upendra Baxi, Introductory Critique to The (Malimath) Committee on Reforms of Criminal Justice System: Premises, Politics and Implications for Human Rights, Amnesty International India (September 2003), 19
- 74 The new s. 164-A, as suggested by the Law Commission of India, provides for production by a police officer of “all persons whose statement appears to him to be material and essential for proper investigation of the case, to the nearest Metropolitan Magistrate or Judicial Magistrate, as the case may be, for recording their statements”. This will apply to

cases involving an offence “punishable with death or imprisonment for seven years or more”. S.344-A provides for a summary procedure for trial of witnesses deposing contrary to the statements recorded under S.164-A.

- 75 Clause 1 of the U.N. Declaration.
- 76 Gerd Ferdinand Kirchhoff, “Victimology - History and Basic Concepts” in Kirchhoff et al (eds.) International Debates of Victimology, WSV Publishing (1994), 1 at 63
- 77 Ezzat A. Fattah, “Some Problematic Concepts, Unjustified Criticism and Popular Misconception”, in Kirchhoff et al (eds.) International Debates of Victimology, WSV Publishing (1994), 82 at 84. Fattah argues that this neutral terminology represents a much needed return to the notion of crime as a conflict and the notion of conflict as an interaction. He points out that “normative designations of “criminal” and “victim” imply such a judgment and therefore preempt a thorough and objective investigation into the real and actual roles each party played in the genesis of the crime.”
- 78 Gunther Kaiser, “Comparative Prospective Concerning Victim Orientation in Criminology, And Criminal Justice” in Kirchhoff et al (eds.) International Debates of Victimology, WSV Publishing (1994), 104 at 137. The author while emphasising the advantages of the victim -offender mediation points out that this “requires as its foundation a form of organisation which is not directly integrated into the judiciary.” Clause 7 of the U.N. Declaration encourages the utilization of informal mechanisms for resolution of disputes “where appropriate to facilitate conciliation and redress for victims.”
- 79 For a detailed analysis of the failure of the legal system to deal with the mass killings of 2733 Sikhs in Delhi in November 1984 in the wake of the riots following the assassination of the Prime Minister. Vrinda Grover, “Quest for Justice 1984 Massacre of Sikh Citizens in Delhi” (2002) (mimeo).
- 80 Report of the Malimath Committee, 270.
- 81 See generally S. Muralidhar, “Legal Aid and the Criminal Justice System in India”, thesis submitted to the degree of Doctor of Philosophy (April 2002).
- 82 The Supreme Court has time and again negated such a plea: See *State of Maharashtra v. M. P. Vashi* (1995) 5 SCC 730
- 83 The Annual Report of the NHRC for the year 1998-99 reveals that the number of deaths in police custody and judicial custody were 183 and 1,114 respectively. There were 436 cases of illegal detentions and 2,252 cases of other police excesses. The official statistics of the National Crime Records Bureau also acknowledges that there were as many as 78 deaths in policy custody and over a 100 deaths during “production/ process imports/ journey connected with investigation”: *Crime in India, 2000*, 355-356.



Compensation to the Victim: Role of SLSA

***Restorative Justice and Victims: Right to Compensation:
By: Haveripeth. Prakash D¹.***

Abstract:

The proponents of the justice argue that punishment is society's customary response to crime; it neither meets the need of victim nor prevents re-offending. Restorative justice aims at encouraging offenders to take responsibility for the consequences of their actions, express repentance and repair the harm they have done. Restorative justice also emphasizes the reintegration of offenders into communities rather than their control through strategies of punishment and exclusion. Restorative justice is an evolving response to crimes that respect the dignity and equality of each person, builds understanding, and promotes social harmony. This process provides an opportunity for victims to obtain reparation, feel safer and seek closure, allow offenders to gain insight into the cause and effects of their behaviour and take responsibility in a meaningful way, and enable communities to understand the underlying causes of crime. What required is a paradigm shift from punitive justice, to restorative justice, which will meet to the need for restitution or reparation of harm to the victims and prevail over demand for punishment. In the light of above, an attempt will be taken to analyse the position of the victim under criminal justice system and the existing law on the victim's right and compensation in India.

Introduction

Restorative justice revolves around the ideas that crime is, in essence, a violation of a person by another person (rather than a violation of legal rules); that in responding to a crime our primary concerns should be to make offenders aware of the harm they have caused, to get them to understand and meet their liability to repair such harm, and to ensure that further offences are prevented; that the form and amount of reparation from the offender to the victim and the measures to be taken to prevent remembers of their communities through constructive dialogue in an informal and consensual process; and that efforts should be made to improve the relationship between the offender and victim and to reintegrate the offender into the law-abiding community. The proponents of the restorative justice argue that punishment society's customary response to crime; neither meets the need of victim nor prevents reoffending. Restorative justice aims at encouraging offenders to take responsibility for the consequences-of their actions; express repentance and repair the harm they have done. Restorative justice. Also emphasizes the reintegration of offenders into communities rather than their control through strategies of punishment and exclusion. Restorative justice is an evolving response to crimes that respect the dignity and equality of each person, builds understanding, and promotes social harmony. It is now believed that many times the Victim induces or facilitates the commission of crime. There are certain offences in which the victim plays a very important role and the works towards the success of crime, e.g., abortion, prostitution. The study of victim-offender relationship is, therefore, considered necessary today for determining the question of guilt of the offender and for fixing up the nature and amount of penalty for the offender. This process provides an opportunity for victims to obtain reparation, feel safer and seek closure, allow offenders to gain insight into the cause and effects of their behavior and to take responsibility

1 Dept of Criminology and Forensic Science, Karnataka Science College Dharwad, INDIA

in a meaningful way, and enable communities to understand the underlying causes of crime. The priority of the criminal justice system should be resolving conflict between the offender and the victim therefore the aim should be to meet to i. victim's needs, ii. to convince the offender his responsibility of the crime and the loss/injury/harm caused by the crime and iii. his liability to repair the offender this process move stress is given to reconciling the offender with the victim and the community by voluntarily paying compensation for the harm caused. What required is a paradigm-shift from punitive justice to restorative justice, which will meet to the need for restitution or reparation of harm to the victims and prevail over demand for punishment. Only recently, society has woken up to the realization of victim's plight and related unfairness of the whole system. The idea of relief and compensation to victims is not a new one. Earlier too, our laws provided for compensation to the victims of accidents. In some cases, the law combined punishment of the offender with monetary satisfactions for the injured party as a means of foretelling enmity through counter-violence by the victim's kin. In the 1950s, an English reformer initiated a modern movement to bring the victim back into the justice equation. "Victim compensation" refers to payments made from state funds to victims of crime. Advocates of victim compensation have argued that since the state is responsible for protecting its citizens from crime, the failure to do so obligates the state to indemnify those who are victimized. The state is believed to be responsible to the victims because imprisonment prevents offenders from paying damages. The general welfare policy also is cited as justification for governmental assistance to the unfortunate victims of crime.

The Indian Law, as compensatory measures victims of crimes, is not in enough and this aspect needs to be reviewed by the legislature to frame or enact necessary law, so as to sufficiently compensate to victims of crimes and to provide safeguards to victims of crimes, besides compensating him in monetary terms. Stephen Schafer studied existing compensation schemes in 29 countries in 1958-59 and gave the following suggestions

i Compensation to victims of crime could be brought within the purview of criminal procedure and dealt with in the same criminal court which deals with the offence, ii. Compensation may be claimed by the victim but if he doesn't, the court should deal with it as part of its fundamental duties, iii. If the question of compensation leads to delay in the pronouncement of sentence, the court should pass a part sentence and may postpone its decision in relation to compensation, iv. Compensation should be fixed with reference to offender's economic and social position, v. Where the offender is not in a position to compensate, the state must undertake its responsibilities, vi. The state should set up a compensation Fund with the aid of fine and other sources of revenue.

The U.N. Congress on Prevention of Crime and Treatment of Offender took up the cause and a contributed substantially in drafting a declaration of victim's right. It was placed on the agenda of the 7 U.N. Congress in Milan, August-September 1985. The U.N. General Assembly adopted the Basic Principles of Justice for Victims of Crime and Abuse of Power; this declaration is specifically concerned with societal response to the needs of the victim. The declaration deals with two focal areas: (a) victims of crime and (b) victims of abuse of power". The first category relates to conventional definition of crime and the declaration lays down norms for providing for i. standards for access to justice and fair treatment, ii. restitution from the 'offender, iii. compensation from the State and. iv legal assistance. The Declaration recognized the following rights of victim of crime i. Access to justice and fair treatment - This right includes access to the mechanisms of justice and to prompt redress, right to be informed of victim's rights,

right to proper assistance throughout the legal process and right to protection of privacy and safety, ii. Restitution - including return of property of payment for the harm or loss suffered; where public officials or other agents have violated criminal laws, the victims should receive restitution from the State, iii. Compensation - when compensation is not fully available from the offender or other sources, State should provide financial compensation at least in violent crimes, resulting in bodily injury for which national funds should be established, iv. Assistance - victims should receive the necessary material, medical, psychological, and social assistance through governmental, voluntary and community' - based means. Police, justice, health, and social service personnel should receive training in this regard. The main objectives of this article are i. To know the problems of victims, ii. To understand the offences against the victims, iii. To know the laws related to victims, iv. To understand the compensation of victims, v. To know the Rights of victims, vi. To know the remedies of victims

Laws Relating to Compensation

The provision relating to compensation to the victims of crime by the offender are contained in Section 357 of the Criminal Procedure Code, 1973 and Section 5 of the Probation of Offenders Act, 1959 and some other statues Section 5 of the Probation of Offenders Act empowers a trial court, in its discretion, to order for 'reasonable compensation' to any person for his loss or injury caused to him by the offender who is released under Section 3 or Section 4 of the Act. The power to compensate the victims of crime under Section 357 of the Criminal Procedure Code is not a new remedy provided under Criminal Procedure Code of 1973. Even Sections 545 and 546 of the Criminal Procedure Code, 1998 provided for compensating victims of crime. The Law Commission of India noted in its Forty First Report (1969) our courts did not exercise their statutory powers under this section as freely and liberally as they could be desired. The Commission favored payment of compensation out of fine imposed on the offender.

Accordingly, With a view to give a substantive power to the trial court to this effect, it recommended insertion of a substantive provision for payment of compensation to the victim of crime.

Under Section 357(1) of the Criminal Procedure Code the court has been empowered to order the payment of compensation to the victim of an offence out of the fine imposed on the accused person while passing an order of sentence of which fine forms a part. Clause (b) of sub-section (1) provides that for compensating the person who has himself suffered injury or loss when compensation is recoverable by a person in a civil court. Clause (c) contains a provision for compensating the heirs and dependents of the person who is victim of a homicide. Sub-section (3) of Section 357 of the Code, which was introduced for the first time in 1973, provides that when a court imposes a sentence of which fine does not form a part, it may direct the accused to pay compensation. Clauses (a) to (d) subsection (1) of Section 357 reproduce word for word clauses (a)(b), (bb), and (c) respectively of the old sub-section (1) of Section '545 with the only change that definite article 'The' has been inserted in clause (a) before the word 'expenses'. Section 357(3) runs: 'When a Court imposes a sentence of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced'.

It is indeed a step forward in our criminal justice system and reflects the concerns of the legislature for the victims of crime who suffer loss or injury due to the act, neglect or default

of the accused. The object of sub-section (3) of Section 357 is to empower the court to award compensation to the heirs and dependents for the loss resulted from the death of the victim of the crime. The compensation should be payable for any loss or injury, whether physical or pecuniary and the court shall give due regard to the nature of the injury, the manner of inflicting the same, the capacity of the accused to pay and other relevant factors. Thus, by the new Section, the jurisdiction of the criminal court has been extended to liberally order for compensating a victim of crime for his loss or injury even in those cases where fine dies not form a part of the sentence, which ordinarily lies in the domain of the civil court. The restorative and reparative theories that have developed in response to the plight of the victims of crime also underline the necessity of compensate the victims of crime. Their Argument is that sentence should move away from punishment of offender towards restitution and reparation, aimed at restoring the harm done and calculated accordingly. Restorative theory encompasses the notion of reparation for the effects of the crime. It envisages less resort to custody, with onerous community based sanctions requiring offenders to work in order to compensate victims and also contemplating support and counseling offenders to reintegrate them into community. Such theories therefore tend to act on a behavioral premise similar to rehabilitation, but their political premise is that compensation for victims should be recognized as more important than notice of just punishment on behalf of the state.

The Supreme Court of India observed plight of the rape victims in India and expressed serious concern and suggested that the defects in criminal laws be removed soon. The Court observed as follows in *Delhi Domestic Working Women's Forum v. Union of India*. "The defects in the present system are firstly, complainants are handled roughly and are not giving such attention as is warranted. The police, more often than not. Humiliate the victims. The victims have invariably found rape trials an experience. The experience of giving evidence in Court has been negative and destructive. The victims often say, they considered the ordeal to be even worse than the rape itself. Undoubtedly the Court proceedings added to and prolonged the psychological stress they had to suffer as a result of the rape itself."

In view of this, the Court laid down the following guidelines for trial of rape cases: i. The complainants of sexual assaults cases should be provided with legal representation. Such a person must be well acquainted with criminal justice. The victims advocate's role should not be only to explain to her the nature of proceedings, to prepare her for the case and to assist her in the police station and in Court but to provide her with guidance as to how she might obtain help of a different nature from other agencies, for example, mind consulting or medical assistance. It is important to secure continuity of assistance by ensuring that the same person who looked after the complainant's interests in the police station represents her until the end of the case. ii. Legal assistance will have to be provided at the police station since the victim of sexual assault might very well be in a distressed state at the police station the guidance and support of a lawyer at this stage would be of great help to her. iii. The police should be under a duty to inform the victim of her right to representation before any questions were asked of her and the police report should state that the victims was so informed, iv. A list of advocates willing to act in these cases should be kept at the police station for victims who did not have any particular lawyer in mind, or whose own lawyer was unavailable, v. The advocate shall be appointed by the Court on application by the police at the earliest convenient moment, but in order to ensure that victims were questioned without undue delay advocates would be authorized to act at the police station before leave of the Court was sought or obtained, vi. In

all rape trials anonymity, (name not to be disclosed), of the victim must be maintained, as far as necessary, vii. It is necessary, having regard to the directive principles contained under Art.38 (1) of the Constitution, to set Criminal Injuries Compensation Board. Rape victims frequently incur substantial loss. Some, for example, are too terrorized to continue in employment. Viii. Compensation for victims shall be awarded by the court on conviction of the offender and by the Criminal Injuries compensation Board whether or not a conviction has taken place. The Board will take into account pain, suffering and shock as well as the loss of earnings due to pregnancy and childbirth if this accrued as result of rape.

The National Commission for Women should be asked to frame schemes for compensation and rehabilitation to ensure justice to victims of such crimes. The Union of India shall then examine and take necessary steps to implement them at the earliest. The Committee feels that the system must focus on justice to victims and has, thus, made the following recommendations, which include the rights of the victim to participate in cases involving serious crimes and to adequate compensation. The victim, and if he is dead, his legal representative shall have the right to be impleaded as a party in every criminal proceeding where the offence is punishable with 7 years imprisonment or more. In select cases notified by the appropriate government, with the Permission of the court an approved voluntary organization shall also have the right to impleaded in court proceedings. The victim has a right to be represented by an advocate of his choice; provided that an advocate shall be provided at the cost of the State if the victim is not in a position to afford a lawyer. The victim's right to participate in criminal trial shall, inter alia, include:

i. To produce evidence, oral or documentary, with leave of the Court and/or to seek directions for production of such evidence, ii. To ask questions to the witnesses or to suggest to the court questions, which may be put to witnesses? Iii. To know the status of investigation and to move the court to issue directions for further investigation on certain matter or to a supervisory officer to ensure effective and proper investigation to assist in the search for truth, iv. To be heard in respect of the grant or cancellation of bail. v. To be heard whenever Prosecution seeks to withdraw and to offer to continue the prosecution, vi. To advance arguments after the Prosecution has submitted arguments, vii. To participate in negotiations leading to settlement of compoundable offences.

The victim shall have a right to prefer an appeal against any adverse order passed by the court acquitting the accused, convicting for a lesser offence, imposing inadequate sentence, or granting, inadequate compensation. Such appeal shall lie to the court to which an appeal ordinarily lies against the order of conviction of such court. Legal services to victims in select crimes may be extended to include psychiatric and medical help, interim compensation, and protection against secondary victimization. Victim compensation is a State obligation in all-serious crimes, whether the offender is apprehended or not, convicted or acquitted. This is to be organized in a separate legislation by Parliament. The draft bill on the subject submitted to Government in 1995 by the Indian Society of Victimology provides a tentative framework for consideration. The Victim Compensation Law will provide for the creation of a Victim Compensation Fund to be administered possibly by the Legal Services Authority. The law should provide for the scale of compensation in different offences for the guidance of the Court. It may specify offences in which compensation may not be granted and conditions under which it may be awarded or withdrawn. It is the considered view of the Committee that criminal justice administration will assume a new direction towards better and quicker justice once the rights

of victims are recognized by law and restitution for loss of life, limb and property are provided for in the system. The cost for providing it is not exorbitant as sometimes made out to be. With increase in quantum of fine recovered.

Conclusion

The expanding universe of compassionate criminology must so respond realistically to the new challenge of human rights and social justice as to salvage, solace and resituate victims of crime and abuse of power by resorting to new methodologies of reparative, compensatory, preventive and other judicial remedies. The victims of crime must claim our attention. Injustice to him/her can be fully undone only by recitative justice, beyond punishment of the offender. The most important interest of the victims of crime is restitution, from the victim's point of view; restitution is beneficial because it helps to make whole the victim's crime related loss. The present laws in the absence of legal mandate to pass an order of restitution to the victim of crime in appropriate case only do lip service to them. Making a mandatory provision for compensating the victim of crime by offender may not solve all the problems of the victim of crime, because this provision also will suffer from the same disadvantage that the offender in most of the cases would be discharged or acquitted due to lack of evidence or other technicality in the procedure. As the provision merely emphasizes that the victim of crime be compensated only on conviction, it is not likely to be of real help. There is therefore an urgent need to establish a victim assistance and compensation board to provide assistance and compensation to the victim of crime. Therefore, it is high time that the government of India should come forward with a scheme/program to provide compensation and assistance to the victims of crime for their loss or injury. As we know the victims as well as the accused/offenders in most cases are necessarily poor, restitution alone cannot solve the problems of the victim of crime. Therefore, a consolidated victim welfare fund may be created on a statutory basis, the fund will be created from the total amount collected by the State as fine from the offenders/accused and also a suitable and matching grant should be provided by the State. A Board named, as victim Welfare Board, which will be of non-political composition, will administer the fund. The payment of compensation shall be left to the discretion of the Board and it may refuse payment where there has been undue delay in reporting to police about the occurrence and also where the victim contributed to the commission of the crime.

For too long the victim of crime have been forgotten and forsaken lots of the criminal justice system. If the victims come to regard their treatment as unfair, distorting of reality or little concerned with their own rights, feeling and interest or if the decisions are made which are felt to be unsatisfactory, it is possible that this "Secondary Victimization" by the system may lead to disinterest and future non cooperation by the victim. When the victim chooses not to cooperate with the system, it will collapse. Therefore, there is a need for renewal of emphasis and enhanced sensitivity to the rights of the victim. Victim's right to assistance is now more acceptable in the developed countries. In India, though there are very limited legal provisions for compensation to the victims of crime by the offender, it received a very cold reception at the hands of judiciary. Hence, there is an urgent need for streamlining the system by legitimately including victim's rights and interests in the system. So also, the victim should be made "whole" with monetary recovery and support service.

In this context, it is pertinent to note that the Supreme Court in *State of Gujarat v. Honorable High Court of Gujarat*[™] directed the state governments to frame law to pay compensation

to the victims of crime from the earning during their sentence period. Such compensation should either be paid directly to the victims or through common fund to be created for this purpose or any other feasible mode. Enacting a law on these lines will be in the fulfillment of the constitutional obligation of the State under Articles 39(1) and 41 of the Constitution of India, which vouchsafe justice and equal protection of law. The new enactment will also be in accordance with U.N. Declaration o/Basic Principles of Justice for Victims o/Crime and U.N. Declaration of Basic Principles and Guidelines on the "Right to Reparation for victims of violation of Human Rights.

2. Laxmi v. Union of India (Supreme Court)(2014) SCC (4) 427

FACTS: Laxmi, whose face and other body parts were disfigured in the acid attack, had a PIL in 2006. A minor then, Laxmi was attacked with acid by three men in New Delhi, as she had refused to marry one of them. She had filed a PIL seeking for the framing of a new law, or amendment to the existing criminal laws, for dealing with the offence, besides asking for compensation. She had also pleaded for a total ban on sale of acid, citing increasing number of incidents of such attacks on women across the country.

On 6.2.2013, a direction was given to the Home Secretary, Ministry of Home Affairs associating the Secretary, Ministry of Chemical & Fertilizers to convene a meeting of the Chief Secretaries/concerned head. Appraisal of the evidence adduced by the prosecution led the trial Court to hold the appellant and his co-accused guilty for the offence of murder. A criminal appeal was preferred before the High Court of Bombay.

Issue: Whether any compensation be awarded against the Appellant and in favour of the bereaved family under Section 357 of the Code of Criminal Procedure, 1973

Decision: The benefit of Exception 4 to S. 300 was awarded to the appellant. The conviction by lower courts was under S. 302 and sentence of RI for life. But the Supreme Court altered to one under S. 304 Pt. II and was thus sentences Jo be imprisoned for a term of 5 years of Rigorous Imprisonment.

Reasoning: The sentence was altered on the basis of consideration of and determination of the nature of injury, weapon used, and part of body on which injury inflicted to the deceased. Looking at S. 357 in this perspective it appears that the provision confers a power coupled with a duty on the Courts to apply its mind to the question of awarding compensation in every criminal case. The power to award compensation was intended to re-assure the victim that he or she is not forgotten in the criminal justice system. The occasion to consider the question of award of compensation would logically arise only after the Court records a conviction of the accused. Capacity of the accused to pay which constitutes an important aspect of any order under S. 357, Cr.P.C. would involve a certain enquiry albeit summary unless of course the facts as emerging in the course of the trial are so clear that the Court considers it unnecessary to do so. It follows that unless S. 357 is read to confer an obligation on Courts to apply their mind to the question of compensation, it would defeat the very object behind the introduction of the provision. If application of mind is not considered mandatory, the entire provision would be rendered a dead letter. As S. 357, Cr.P.C, confers a duty on the Court to apply its mind to the question of compensation in every criminal case, it necessarily follows that Court must disclose that it has applied its mind to this question in every criminal case. Such an enquiry can precede an order on sentence to enable the Court to take a view, both on the question of sentence and compensation that it may in its wisdom decide to award to the victim or his/ her family.

4. *Suresh & Anr vs State Of Haryana (Supreme Court) (2015) 2 SCC 227*

Facts: On 18th December, 2000, the deceased and his son deceased had been kidnapped and ransom was demanded for their release. Since, the family could not fulfil the demand and offer to pay rupees ten lacs was not accepted by the kidnappers. The police was not informed on account of the fear.

The disclosure statement of one person brought this fact to light that the two persons had been killed. After the required investigation, the accused were sent up for trial. The trial Court convicted and sentenced the appellants for kidnapping and murder and concealing evidence in conspiracy and by Secretaries of the State Governments and the Administrators of the Union Territories, inter alia, to discuss the following aspects:

- ❖ Enactment of appropriate provision for effective regulation of sale of acid in the States/ Union Territories
- ❖ Measures for the proper treatment, after care and rehabilitation of the victims of acid attack and needs of acid attack victims,
- ❖ Compensation payable to acid victims by the State/or creation of some separate fund for payment of compensation to the acid attack victims.

DECISION: In this case, the court directed that the acid attack victims shall be paid compensation of at least Rs. 3 lakhs by the concerned State Government/Union Territory as the after care and rehabilitation cost. Of this amount, a sum of Rs. 1 lakh shall be paid to such victim within 15 days of occurrence of such incident (or being brought to the notice of the State Government/ Union Territory) to facilitate immediate medical attention and expenses in this regard. The balance sum of Rs. 2 lakhs shall be paid as expeditiously as may be possible and positively within two months thereafter.

The Chief Secretaries of the States and the Administrators of the Union Territories shall ensure compliance of the directions that have been issued in the judgement. Various other important orders have also been passed by the Court directing the authorities formed at various levels to carry out a specific task. One of them is the order issued by the Supreme Court on April 10, 2015, for the enactment and publicity of the Victim Compensation Scheme in concerned states so as to provide relief and rehabilitation to the victims.

REASONING: Section 357A came to inserted in the Code of Criminal Procedure, 1973 by Act 5 of 2009 w.e.f. 31.12.2009. Inter alia, this Section provides for preparation of a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.

3. *Ankush Shivaji Gaikwad v. State of Maharashtra AIR 2013 SC 2454 (Supreme Court)*

Facts: The appellant-Ankush Shivaji Gaikwad accompanied by Madhav Shivaji Gaikwad (accused No.2) and Shivaji Bhivaji Gaikwad (accused No.3) were walking past the field when there was a scuffle between the deceased and the accused persons in the course. On account of the injury inflicted upon him, the deceased fell to the ground. All the three accused persons ran away from the spot. The deceased was rushed to the hospital. But, the deceased eventually succumbed to his injuries. According to the doctor, the death was caused by the injury to the common intention. The decision was affirmed by the High Court. The court had asked the learned counsel for the parties to make their submissions as to applicability of S. 357 A of the

Code of Criminal Procedure providing for compensation by the State to the victims of the crime. Decision: appeal dismissed. Interim compensation of rupees ten lacs was ordered to be paid to the family, by the Haryana State Legal Services Authority within one month. If the funds are not available for the purpose with the said authority, the State of Haryana will make such funds available within one month and the Legal Services Authority will disburse the compensation within one month thereafter.

Reasoning: The object and purpose of the provision is to enable the Court to direct the State to pay compensation to the victim where the compensation under S. 357 was not adequate or where the case ended in acquittal or discharge and the victim was required to be rehabilitated. Under this provision, even if the accused is not tried but the victim needs to be rehabilitated, the victim may request the State or District Legal Services Authority to award him/her compensation. The court also discussed the rights of the victims as recognized by the UN General Assembly in resolution titled "Declaration on Basic Principles of Justice for Victims and Abuse of Power, 1985". It contained the provisions on restitution and compensation. The court acknowledged the fact that 25 out of 29 State Governments have notified victim compensation schemes. The schemes specify maximum limit of compensation and subject to maximum limit, the discretion to decide the quantum has been left with the State/District legal authorities. Also that even though almost a period of five years has expired since the enactment of Section 357A, the award of compensation has not become a rule and interim compensation, which is very important, is not being granted by the Courts. Moreover, the upper limit of compensation fixed by some of the States is arbitrarily low and is not in keeping with the object of the legislation.

5. Suo Motu Writ Petition (Criminal) NO. 24 of 2014 AIR 2014 SC 2815

Facts: The Supreme Court, based on the news item published in the Business and Financial News dated 23.01.2014 relating to the gang-rape of a 20 year old woman of Subalpur Village, in the State of West Bengal on the orders of community panchayat as punishment for having relationship with a man from a different community, by an order, took suo motu action and directed the District Judge in the area to inspect the place of occurrence and submit a report to the Supreme Court within a period of one week from that date.

On perusal of the report, it was found out that there was no information in the report as to the steps taken by the police against the persons concerned, directed the Chief Secretary, West Bengal to submit a detailed report in this regard within a period of two weeks. An amicus curiae was thereafter appointed, to assist the court in this matter.

Issue: Earlier, Section 357 ruled the field which was not mandatory in nature and only the offender can be directed to pay compensation to the victim under this Section. But, under the new Section 357A, the onus is put on the District Legal Service Authority or State Legal Service Authority to determine the quantum of compensation in each case.

Decision : The court opined that the victim should be given a compensation of at least Rs. 5 lakhs for rehabilitation by the State. Respondent No. 1 (State of West Bengal through Chief Secretary) was directed to make a payment of Rs. 5 lakhs, in addition to the already sanctioned amount of Rs. 50,000, within one month. It was also clarified that according to Section 357B, the compensation payable by the State Government under Section 357A shall be in addition to the payment of fine to the victim under Section 326A or Section 376D of the IPC.

Reasoning: The decision in the case was entirely based on the scheme of S. 357A of Cr.p.c. that enshrines the procedure for compensation to the victims and the facts and circumstances of the case. The court highlighting the importance of the compensation to the victim stated that the obligation of the State does not extinguish on payment of compensation, rehabilitation of victim is also of paramount importance. The mental trauma that the victim suffers due to the commission of such heinous crime, rehabilitation becomes a must in each and every case.

□□□

An Analysis of The Vanishing Point of Indian Victim Compensation Law

JHALAK KAKKAR AND SHRUTI OJHA*

Reforms toward a restorative criminal justice system hinged on the amendment made to the Indian Criminal Procedure Code of 1973 in 2008. These amendments were undertaken by the government in order to reform India's archaic criminal laws. The major thrust of the victim related amendments were on defining 'victim' and recasting existing defunct laws related to the provision of compensation to victims. Unfortunately the major fallacy of the recent law is that it once again seems to leave the provision of compensation to the sole discretion of the judge. The prime focus of this paper would be an analysis of the above-mentioned amended law and the shortcomings of the same.

I. INTRODUCTION

The criminal justice system in India would ensure efficacious and expeditious justice once the law recognizes the rights of victims and adequately provides for the compensation of victims. In 2008, the Government undertook major amendments to the Criminal Procedure Code of 1973 (hereinafter "CrPC"), in order to strengthen India's criminal system.¹ The amendment focusing on victim-justice, for the first time sought to define the term "victim" and refurbish the defunct laws related to provision of compensation to victims. Unfortunately it once again leaves the provision of 314 JOURNAL OF INDIAN LAW AND SOCIETY [Vol. 2 : Monsoon] compensation to the sole discretion of the judge; something that has been rarely exercised of their own accord in the past the vanishing point of Indian victim compensation law.² The prime focus of the article would be victim compensation law and its interface with criminal justice. The authors will outline the recently amended law that deals with victim compensation and the shortcomings of the same.³ We place the blame for such needless suffering squarely on the criminal justice system especially the non-exercise of discretion by the Indian judiciary.

II. EVOLUTION OF THE CONCEPT OF COMPENSATION IN CIVIL AND CRIMINAL LAW

Historically, the principle of compensation to the victims of crime or wrong has been a part of most legal systems. In the 12th and 13th centuries a distinction was made between

* 5th Year students, W.B. National University of Juridical Sciences, Kolkata. A version of this paper was previously presented at the World Society of Victimology's 13th International Symposium on Victimology at Tokiwa University, Mito, Japan. (August 23-28, 2009)

1 The amendments were notified in Dec. 2009.

2 K.I. VIBHUTE, Justice to Victims of Crime: Emerging Trends and Legislative Models in India, in CRIMINAL JUSTICE: A HUMAN RIGHTS PERSPECTIVE OF THE CRIMINAL JUSTICE PROCESS IN INDIA 370, 392-93 (2004).

3 Compensation is also awarded in the form of a constitutional remedy for human rights violations. It is interesting to note that compensation available under a constitutional remedy is far more readily invoked and of a greater quantum than that which is generally granted under § 357(3) of the CrPC. See A.K. Singh v. Uttarakhand Jan Morcha, (1999) 4 S.C.C. 476; D.K. Basu v. State of West Bengal, (1997) 1 S.C.C. 416; Chairman, Railway Board v. Chandrima Das, (2000) 1 S.C.C. 465; Saheli, a Woman's Resource Centre v. Commissioner of Police, (1990) 1 S.C.C. 420; Nilabati Behera v. State of Orissa, (1993) 2 S.C.C. 746; Rudal Shah v. State of Bihar, (1983) 4 S.C.C. 141; State of Punjab v. Ajaib Singh, (1995) 2 S.C.C. 486.

various kinds of wrongs, i.e., civil wrong and public wrongs.⁴ In the case of civil wrongs the injury was specific to the individual, hence the perpetrator was necessitated to pay compensation. However, given that in public wrongs the offence affected the public at large, the State took responsibility upon itself to punish the accused.

Various justifications for compensation have been used, such as: benefit to the victims, symbolic social recognition for the victims suffering, deterrent effects on the offender as also the reformative effects on the offender as the paying of compensation has an “intrinsic moral value of its own”.⁵

The Hammurabi code of ancient Babylonian makes the earliest reference to state compensation for victims of crime.⁶ It specified that:

“If a man has committed robbery and is caught, that man shall be put to death. If the robber is not caught, the man who has been robbed shall formally declare what he has lost . . . and the city . . . shall replace whatever he has lost for him. If it is the life of the owner that is lost, the city or the mayor shall pay one maneh of silver to his kinsfolk.”⁷

This principle was well accepted in England in the Anglo-Saxon period of the seventh century. The Kentish laws of Ethelbest contained specified amounts of compensation for a large number of crimes ranging from murder to adultery.⁸ In the early Common Law of Middle England, if a man was murdered, the victim’s family was entitled to a wergild of four pounds.⁹ Over time the criminal justice system was separated from the civil system due to the simultaneous growth of Royal and Ecclesiastical power.¹⁰ Offences like murder, robbery and rape did not remain within the category of tort to be settled by compensation but were regarded as crimes against society and were punishable as such.¹¹ Hence, state compensation disappeared and the state played a punitive role, imposing punishment for not only the harm done to individual victims but also harm done to the king or feudal lord.¹²

This saw a change with the stirrings of the prison reform movement in Europe during the nineteenth century.¹³ Jeremy Bentham believed that due to the presence of the social contract between the state and the citizen, victims of crime should be compensated when their property or person was violated. It is the role of the state to prevent crime and protect people and property. If the state is unable to prevent a crime it falls upon the state to support the victim. State compensation is further justified because it is the political, economic and social institutions

4 K.D. Gaur, Justice to Victims of Crime: A Human Rights Approach, in CRIMINAL JUSTICE: A HUMAN RIGHTS PERSPECTIVE OF THE CRIMINAL JUSTICE PROCESS IN INDIA 350, 351 (2004).

5 LAW COMMISSION OF INDIA, ONE HUNDRED AND FIFTY FOURTH REPORT ON THE CODE OF CRIMINAL PROCEDURE, 1973 (1996), at 57.

6 See Morris Fish, An Eye for an Eye: Proportionality as a Moral Principle of Punishment, 28(1) OXFORD JOURNAL OF LEGAL STUDIES 57, 58-61(2008).

7 Marlene A. Young, Meeting Victim Needs: What is the Role of Victim Compensation in Recovery? (Discussion Paper), THE NATIONAL CENTRE FOR VICTIMS OF CRIME (May, 2003), at 1, available at <http://www.ncvc.org/ncvc/AGP.Net/Components/documentViewer/Download.aspxnz?DocumentID=32597>. See generally Gerhard O. W. Mueller, Compensation for Victims of Crime: Thought before Action, 50MINN. L. REV. 213 (1965).

8 Dr. Kaushal Kishor Bajpai, The History of Compensation of the Victims of Crime, AIR WEB WORLD, <http://airwebworld.com/articles/index.php?article=1058> (last visited Jan 30, 2012).

9 Young, supra note 7, at 2.

10 Bajpai, supra note 8.

11 Bajpai, supra note 8.

12 Supra note 5.

13 Supra note 5.

of the state that generate crime by poverty, discriminations, unemployment and insecurity.¹⁴ This justification has not been completely accepted, as it would entail the compensation of all victims of crime to the full extent of damages suffered by them. Nonetheless it is the foundation for providing compensation as part of the state's response to the suffering of victims.¹⁵

This concept of state compensation was discussed at fifth International Prison Congress in the latter half of the century.¹⁶ Despite the activism of Penologists like Jeremy Bentham the acceptance of the principles of compensation to the victims remained unfulfilled.¹⁷ During the 1950's Margery Fry, an English penal reformer called refocusing on the plight of victims and the bestowing of effective remedies on victims such as state compensation.¹⁸ This heralded the establishment of state compensation programs in the American and European jurisdictions.¹⁹ Britain set up a nonstatutory program in 1964, which was administered by the Criminal Injuries Compensation Board and the funds being sanctioned by the Parliament annually.²⁰ This compensation was provided in the form of a lump-sum payment to the victim and was computed in the same manner as damages in a civil award.²¹ This program was given statutory form in the Criminal Injuries Compensation Act, 1995 which computed compensation based on a tariff scheme, which took into account the need for special care and dependency.²²

The move towards state compensation was mirrored in the United States, with California being the first state to do so in 1965.²³ In 1984 the Victims of Crime Act 1984 was enacted by the Congress, which established a Crime Victims Fund within the US Treasury.²⁴ This compensation is provided only to innocent victims and those who are involved in serious crimes.²⁵

This necessity for compensating victims of crime was emphasized by the United Nations in its Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and the 2006 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. The former deals with the victims of domestic crimes, while the latter with victims of international crimes.

The need for a victim compensation framework has been recognised by the international community. Though the Universal Declaration of Human Rights, 1948²⁶ does not specifically speak of compensation, Article 9 states that no one "shall be subject to arbitrary arrest, detention...". By reading the procedural guarantees provided under Articles 6, 7 and 8 one could infer that for the violation of such rights the victim is entitled to an "effective remedy". Given the facts of the case, compensation could be one such effective remedy.

14 Id. See generally Frank Carrington & George Nicholson, *The Victims Movement: An Idea Whose Time Has Come*, 11 PEPP. L. REV. 1 (1983).

15 Young, *supra* note 7, at 3.

16 Bajpai, *supra* note 8.

17 Id.

18 Abner J. Mikva, *Victimless Justice*, 71 J. CRIM. L. & CRIMINOLOGY 189, 191 (1980). See generally Margery Fry, *Penal Reform in the Colonies*, 8(2) THE HOWARD JOURNAL OF CRIMINAL JUSTICE 90 (1951).

19 *Supra* note 5, at 57-58. See generally Terence Morris, *British Criminology: 1935-48*, 28(2) BRIT. J. CRIMINOLOGY 20, (1988).

20 *Supra* note 5.

21 *Supra* note 5.

22 *Supra* note 5, at 58.

23 *Supra* note 5, at 58.

24 *Supra* note 5, at 58.

25 *Supra* note 5, at 58. See also David L. Roland, *Progress in the Victim Reform Movement: No Longer the Forgotten Victim*, 17 PEPP. L. REV. 35, 36 (1989).

26 Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc.A/RES/217(III) (Dec. 10, 1948).

Furthermore, the International Covenant on Civil and Political Rights²⁷ states that a victim of unlawful arrest or detention shall have an enforceable right to compensation.²⁸ The European Convention for the Protection of Human Rights and Fundamental Freedoms²⁹ has an identical provision.³⁰ American Convention on Human Rights³¹ entitles a person to compensation in case of miscarriage of justice due to wrong sentencing.³²

The right of compensation to the victim was finally crystallised in the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power³³ of 1985, which recognises four types of rights and entitlements of victims of crime: (a) Access to justice and fair treatment, (b) Right to restitution, (c) Personal assistance and support services, and (d) Compensation.³⁴

In the pre-independence period the criminal justice system remained largely preoccupied with the crime-control oriented policy that viewed criminal justice in terms of a state monopoly with a narrow focus of justice, confined to the State and the accused.³⁵ However, in the post-independence period it expanded beyond the reformation and rehabilitation of the offender to acknowledge the plight and concerns of the victims.³⁶

In spite of this emerging trend the aspect of compensation remains subordinate to the punitive role of the State. Justice V.N. Krishna Iyer, highlighted the continued apathy of the criminal justice system:

“It is the weakness of our jurisprudence that victims of crime and the distress of the dependents of the victim do not attract the attention of law. In fact, victim reparation is still the vanishing point of our criminal law. This is the deficiency in the system, which must be rectified by the legislature.”³⁷

III. INDIAN POSITION

The present criminal justice system is based on the assumption that the claims of a victim of crime are sufficiently satisfied by the conviction of the perpetrator.³⁸ The Committee on Reforms of Criminal Justice System, chaired by Justice Dr. V.S. Malimath, by the Ministry of Home Affairs, in its Report submitted to the Government of India in March 2003, perceived that “justice to victims” is one of the fundamental imperatives of criminal law in India.³⁹ It suggests a holistic justice system for the victims by allowing, among other things, participation in criminal proceedings as also compensation for any loss or injury.⁴⁰

27 International Covenant on Civil and Political Rights, G.A. Res. 2200(XXI) A, U.N. Doc. A/RES/2200(XXI) (Dec. 16, 1966).

28 Id., Art. 9(5).

29 European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 222.

30 Id., Art. 5(5).

31 American Convention on Human Rights, Nov. 22, 1969, 1144 U.N.T.S. 123.

32 Id., Art. 10.

33 United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, G.A. Res. 40/34, U.N. Doc.A/RES/40/34 (Dec. 11, 1985).

34 It states that when compensation is not fully available from the offender or other sources, the State should provide it at least in violent crimes that result in serious bodily injury, for which a national fund should be established.

35 VIBHUTE, supra note 2, at 374-75.

36 Id.

37 Rattan Singh v. State of Punjab, (1979) 4 S.C.C. 719, 721, ¶ 6.

38 Gaur, supra note 4, at 351.

39 N.R. Madhava Menon, Victim's Rights and Criminal Justice Reforms, THE HINDU, Mar. 27, 2006, at 7, available at <http://www.hindu.com/2006/03/27/stories/2006032703131000.htm>.

40 Report of Committee on Reforms of Criminal Justice System, Ministry of Home Affairs, Government of India (2003) at 80-81, ¶ 6.8.

In India, there are five possible statutory provisions under which compensation may be awarded to victims of crime, namely:

- ❖ Fatal Accidents Act, 1855
- ❖ Motor Vehicles Act, 1988
- ❖ Criminal Procedure Code, 1973
- ❖ Probation of Offenders Act, 1958; and
- ❖ Constitutional remedies for human rights' violations

Until 2009, there was no comprehensive legislation or a well-designed statutory scheme in India that allowed a victim to seek compensation from either the perpetrator or the State. The recent amendment to the CrPC notified in 2009, addressed the victim's right to compensation. It is a step forward; however, some inherent flaws remain.

A. Position Prior To The Amendment

A careful glance at the CrPC, 1973, reveals a highly fragmented legislative scheme for compensating victims.⁴¹ In pursuance of the recommendation of the Law Commission in its Forty-first Report (1969), a provision was made for the victims of crime that has been provided in Section 357 of the CrPC. This provision states "Court may award compensation⁴² to victims of crime at the time of passing of the judgment, if it considers it appropriate in a particular case, in the interest of justice".

Unfortunately, under Section 357(1), compensation is obtainable only when the court imposes a fine and the amount of compensation is limited to the amount of the fine. It lays down four grounds for imposing a fine: (1) defraying pecuniary losses incurred by the person in prosecution, or (2) by a bona-fide purchaser of stolen goods, or (3) for loss 41 Sections 357, 421 & 431 empower a criminal court, at its discretion, to award compensation to a victim of crime as well as to recover it and pay it to him caused by injury or death, or (4) if the victim has suffered loss or injury caused by the offence.

However, Section 357(3)⁴³ empowers the Court to award compensation for loss or injury suffered by a person, even in cases where fine does not form a part of the sentence. It is left to the discretion of the court to decide the amount of compensation, depending on the facts and circumstances of each case. This sub-section was introduced after the repeal of the CrPC of 1898. Since, this provision is not conditioned on a sentence of fine; some argue that it assumes the role of an additional punishment.⁴⁴

Although the principle underlying Section 357 is similar to that envisaged in the UN Basic Principles of Justice for Victims of Crime, its application is limited to where (1) the accused is

41 Sections 357, 421 & 431 empower a criminal court, at its discretion, to award compensation to a victim of crime as well as to recover it and pay it to him.

42 Section 357(1) empowers the court to award compensation out of the fine in the following cases: for meeting proper expenses of prosecution; compensation to a person or dependants for the loss or injury caused by the offence when he can recover compensation in a civil court; compensation to persons entitled in damages under the Fatal Accidents Act, 1855; and compensation to a bona fide purchaser of property which being the subject of theft, criminal misappropriation, cheating, etc. is ordered to be restored to the person entitled to it.

43 357(3): "When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused to pay, by way of compensation, such amount as may be specified in the order to the person, who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced".

44 VIBHUTE, supra note 2.

convicted and (2) either the compensation is recovered in the form of a fine, when it forms a part of the sentence or a Magistrate may order any amount to be paid to compensate for any loss or injury by reason of the act for which the accused has been sentenced and (3) in awarding the compensation the capacity of the accused has to be taken into account by the Magistrate.⁴⁵ Practically, given the low rates of conviction in criminal cases⁴⁶, the long drawn out proceedings and the relatively low capacity of the average accused to pay, one needs to question whether an effective victim compensation scheme exists.

The dismal provision of compensation to victims of crime was due to the infrequency with which the judges invoked this section-the vanishing point of Indian victim compensation law. This has been dealt with in detail at a later point in this note.

B. Position Post Amendment

To address the absence of a definition of a victim, subsection (w) has been inserted in Section 2 of the amended CrPC as below:

“(wa) ‘victim’ means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression ‘victim’ includes his or her guardian or legal heir”.

Let us compare this definition with the comprehensive one in the United Nations Declaration of the Basic Principle of Justice for the Victims of Crime and Abuse of Power⁴⁷:

“Victim includes, any person who, individually or collectively, has suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of his fundamental rights, through acts or omissions that are in violation of criminal laws operating within the member States including those laws prescribing criminal abuse of power. A person would be considered a victim, irrespective of whether the perpetrator is identified, apprehended, prosecuted or convicted and irrespective of familiar relationship between the perpetrator and the victim. The term victim includes, where appropriate, the immediate family of the dependents of the direct victim and the persons who have suffered harm in intervening to assist victim in distress or to prevent victimization. The provisions are applicable to everyone irrespective of race, age, cultural belief or practices, property, birth or family status, ethnic or social origin disability and nationality.”

Given the propensity of a narrow interpretation of “loss or injury” suffered by the victim we believe that an expansive delineation of what constitutes loss or injury should be added by the legislature. This will also check the varied interpretations made and ensure uniformity in the dispensation of compensation. Explicit inclusion of compensation to victims of criminal abuse of power should also have been made.

45 N.R. Madhava Menon, Victim Compensation Law and Criminal Justice: A Plea for A Victim Orientation in Criminal Justice, in CRIMINAL JUSTICE: A HUMAN RIGHTS PERSPECTIVE OF THE CRIMINAL JUSTICE PROCESS IN INDIA 362, 363-364 (2004).

46 Id. at 364. It is less than 10%.

47 Supra note 33. These U.N. Basic Principles were premised on the recommendations of the Sixth U.N. Congress on the Prevention of Crime and Treatment of Offenders was passed by the U.N. General Assembly in 1985.

Additionally, there is a need to include persons who have suffered harm while intervening to assist victims in distress or to prevent victimization. For instance, in the United States, specifically California, Massachusetts and New York, have laws that provide for the compensation to those who suffer injuries while preventing a crime or apprehending a criminal, etc.⁴⁸ It is important that along with victims the police are also entitled to compensation. Thus, these provisions encourage both the police and populace at large, to curb crime.

C. Analysis Of Section 357A

Under the amended Indian law, sub-section (1) of Section 357A of the CrPC discusses the preparation of a scheme to provide funds for the compensation of victims or his dependents who have suffered loss or injury as a result of a crime and who require rehabilitation.

Sub-section (2) states that whenever the Court makes a recommendation for compensation the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the above-mentioned scheme. It is significant that the Legal Services Authority, comprising of technical experts, has been entrusted the task of deciding the quantum of compensation, since they are better equipped to calculate/quantify the loss suffered by a victim. However, the provision loses its teeth because the discretion remains with the judge to refer the case to the Legal Services Authority- a situation that has previously been the vanishing point of Indian victim compensation law. The problem is compounded by the fact that traditionally Indian judges have been hesitant to invoke this provision. A more effective solution could be to make compensation a statutory right, with a provision mandating that the judges have to record reasons for not awarding compensation.

It is a positive development that in sub-section (3) the trial court has been empowered to make recommendations for compensation in cases where-

- ❖ Either the quantum of compensation fixed by the Legal Services Authority is found to be inadequate; or,
- ❖ Where the case ends in acquittal or discharge of the accused and the victim has to be rehabilitated.

However, there is scope to further extend compensation to victims in these cases that end in acquittal or discharge beyond rehabilitation to compensation for loss.

Sub-section (4) of Section 357A states that even where no trial takes place and the offender is not traced or identified; but the victim is known, the victim or his dependents can apply to the State or the District Legal Services Authority for award of compensation. We see a shift towards state funded victim compensation as has been established in the United Kingdom and the United States. This is an extremely progressive development that takes into account practical reality of an overburdened criminal justice system, which is unable to identify all offenders and prosecute them.

Sub-section (5) says that on receipt of the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months. It is pertinent that a time frame has been provided within which the Legal Services Authority should conduct its enquiry and award compensation. A period of two months, as specified in the proposed amendment, would ensure speedy delivery

48 Gaur, supra note 4, at 360-61.

of justice to the victim and specification of a time period would create accountability and prevent dilatory measures. Moreover, it should be noted that the section speaks of 'adequate compensation'; thus ensuring the quantum of compensation awarded should be just and fair.

Further, sub-section (6), states that, in order to alleviate the suffering of the victim, the State or District Legal Services Authority may order immediate first-aid facility or medical benefits to be made available free of cost or any other interim relief as the appropriate authority deems fit. It is a positive that the section speaks of "alleviating the suffering" of the victim and seeks to help the victim recover in the after-math of the crime and ensure that the victim does not have to wait till the end of the trial to recover these costs. The statutory recognition of the right to interim relief is an important step and an urgent need of the hour.

Furthermore, Section 372 of the CrPC has been amended, containing the following proviso:

"Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court."

The section provides a victim a specific right of appeal in the following circumstances:

- ❖ Acquittal of the accused,
- ❖ Conviction for a lesser offence, and;
- ❖ Inadequate compensation.

Earlier, the section mentioned a general right to appeal and restricted the right to only those situations as provided for in the CrPC or any other applicable law.

Apart from the above-mentioned provisions, the victim can claim compensation by approaching a higher court under Section 482 of the CrPC, which empowers the court to exercise its inherent powers in the interest of justice. However, the Supreme Court has discouraged this practice, in view of the availability of compensation under Section 357.⁴⁹

Nevertheless, trial courts seldom exercise the powers conferred on them under Section 357- the vanishing point of victim compensation law in India. Reprimanding this attitude, the Supreme Court in the *Hari Krishna & State of Haryana v. Sukhbir Singh* (hereinafter "Hari Krishna")⁵⁰, directed all courts to exercise Section 357 liberally and award adequate compensation, particularly in cases where the accused is released on admonition, probation or when the parties enter into a compromise. At the same time, the court cautioned that the compensation must be reasonable, fair and just; taking into account the facts and circumstances of each case—nature of the crime, veracity of the claim and ability of the accused to pay.⁵¹ The following paragraph from the court's judgment sums up the importance of Section 357(3) succinctly:

49 *Palaniappa Gounder v. State of Tamil Nadu*, ¶ 3, (1977) 2 S.C.C. 634, 636. (In this case, the son and two daughters of the deceased files an application before the High Court under S. 482 of the CrPC, praying that the accused be directed to pay them, the dependants of the deceased, compensation to the tune of Rs. 40,000 for the death of their father. Finally, in the Supreme Court it was held that since S. 357 expressly confers powers on the court to compensate the heirs, there is no need for invoking or exercising the inherent powers of the court).

50 *Hari Krishna & State of Haryana v. Sukhbir Singh*, (1988) 4 S.C.C. 551.

51 *Id.*, ¶ 11.

“Section 357 of the CrPC is an important provision but Courts have seldom invoked it. This section of law empowers the Court to award compensation while passing judgment of conviction. In addition to conviction, the Court may order the accused to pay some amount by way of compensation to the victim who has suffered by the action of the accused. This power to award compensation is not ancillary to other sentences but is in addition thereto. It is a measure of responding appropriately to crime as well as reconciling the victim with the offender. It is, to some extent, a constructive approach to crimes. It is indeed a step forward in our criminal justice system. We therefore recommend to all courts to exercise this power liberally so as to meet the ends of justice in a better way.”⁵²

The court further observed that the payment by way of compensation must, however, be reasonable. What is reasonable may depend upon the facts and circumstances of each case.⁵³ The quantum of compensation may be determined by taking into account the nature of the crime and the ability of the accused to pay. If perhaps, there are more than one accused they may be asked to pay in equal terms, unless their capacity to pay varies considerably.⁵⁴ A reasonable period for payment of compensation, if necessary by instalment, may also be given.⁵⁵ The court may enforce the order by imposing sentence in default.⁵⁶

Thus, the court must be satisfied that the victim has suffered loss or injury due to the act, neglect or default of the accused to be entitled to recover compensation. This loss or injury may be physical, mental or pecuniary. In Hari Krishna, the Supreme Court interpreted the scope of Section 357(3) to mean that a reasonable amount has to be awarded as compensation taking into consideration not merely the gravity of the injury or misconduct of the accused but also the capacity of the accused to pay.⁵⁷ This practice of taking into account the accused's capacity to pay is problematic as in most cases this either deters the judges from exercising their discretion of awarding compensation or it prompts them to award compensation which is nominal in nature. However, since the State will be establishing a compensation fund for the purpose of compensating victims, this aspect will not play such a vital role in deterring the exercise of this discretion as it has in the past. The court stated that the High Courts must orient the Judicial Officers in this new aspect of compensatory criminal jurisprudence.

The progressive judgment of the Supreme Court in the Hari Krishna to compensate victim of crime under Section 357(3) of the CrPC was not allowed by the Court in its later judgments in Brij Lal v. Prem Chand⁵⁸, State of U.P. v. Jodh Singh⁵⁹, State of Mysore v. Tyhappa⁶⁰, N.B. Panth v. State⁶¹ and Gur Swami v. State⁶². In these cases the Court awarded compensation to the victims of crime out of the fine amount i.e. under Section 357(1) CrPC and was far more sympathetic toward the accused rather than the victim.

52 Id., ¶ 10.

53 Id., ¶ 11.

54 K.A. Abbas H.S.A. v. Sabu Joseph & Anr., (2010) 6 S.C.C. 23, ¶ 22.

55 Id., ¶ 20.

56 Id.

57 Supra note 50, ¶ 11.

58 Brij Lal v. Prem Chand, (1989) Supp (2) S.C.C. 680.

59 State of U.P. v. Jodh Singh, A.I.R. 1989 S.C. 1822.

60 State of Mysore v. Tyhappa, A.I.R. 1962 Mys. 51.

61 N.B. Panth v. State, A.I.R. 1977 S.C. 892.

62 Gur Swami v. State, A.I.R. 1979 S.C. 892.

Baldev Singh v. State of Punjab⁶³ is another important case in the victimological approach of judicial law making. The Supreme Court ordered a grant of compensation by invoking Section 357(3) of the CrPC. The Supreme Court held that in the circumstances of the case an order of compensation would be more appropriate instead of sentence of imprisonment. Here, the Court used its judicial discretion to the benefit of the victims and opted for the compensation theory instead of extending the sentences of imprisonment.

While looking at Indian compensation laws it is imperative to note that under subsection (1), the compensation to the victim of crime has to be paid out of the fine and the court should determine the necessity and the consequent amount of the fine. In Adamji Umar v. State of Bombay⁶⁴, Supreme Court observed that while passing a sentence the court has always to bear in mind the proportionality between an offence and the penalty. In imposing a fine it is necessary to have as much regard to the pecuniary circumstances of the accused person and to the character and magnitude of the sentence, where a substantial term of imprisonment is imposed, an excessive fine could not accompany it except in exceptional cases.⁶⁵ The criminal court's power to award compensation is limited by the considerations which govern the imposition of fine as compensation.

This section should be implemented liberally towards compensation of the victim for his/her loss or injury; even in cases where the claim of compensation ordinarily lies in the domain of the civil court. Victim should be spared the time and expense of bringing civil suits, claiming compensation; as well as the emotional strain of enduring a second trial.

Though, justice has been meted out to the victims through judicial creativity at the appellate level; these instances are few and far between.⁶⁶ The provisions in the CrPC after the recent amendment are more holistic in their approach of addressing the plight of victims. However, the infrequency with which these provisions are invoked by judges in a bid to achieve victim justice and to alleviate the suffering of the victim would render these provisions redundant and be the vanishing point of Indian victim compensation.

To effectuate any progressive victim compensation reforms, there is a need for a sensitized judiciary that recognizes the importance of victim compensation. Consequently, the High Courts must orient and train the Judicial Officers towards compensatory criminal jurisprudence. Some positive steps have been initiated with the establishment of judicial academies in each state, where newly recruited judicial officers are sent for training and senior officers are offered refresher courses.

D. Evolution Of The Constitutional Remedy Of Victim Compensation

The principles of victimology has foundations in the Indian Constitution particularly in the fundamental rights and directive principles of state policy, which form the bulwark for a new social order in which social and economic justice would be ensured. Article 51A is a fundamental duty of every citizen to have compassion for living creatures and to develop

63 Baldev Singh v. State of Punjab, (1995) 6 S.C.C. 593, ¶ 14.

64 Adamji Umar v. State of Bombay, A.I.R. 1952 S.C. 14. This was also held in Palaniappa Gounder v. State of Tamil Nadu, A.I.R. 1978 S.C. 1525. The court reduced the fine of Rs. 20,000 imposed by the High Court on the accused, who has been sentenced to life imprisonment for committing murder, to a meagre sum of Rs. 3,000. This was once again reiterated by the Supreme Court in Swaran Singh & Anr. v. State of Punjab, (2000) 5 S.C.C. 668.

65 Id.

66 C. Raj Kumar, Emergence and Evolution of Victim Justice Perspectives in India, 25 (2) INDIAN JOURNAL OF CRIMINOLOGY 71, 74-77.

humanism. This mandate expressly provided for in the Constitution, broadly forms the constitutional underpinnings for victimology.⁶⁷

A significant phase in the evolution of victimology in India was witnessed in the 1980s, through the creative judicial decisions delivered by the appellate courts. There were a series of decisions handed down in the 1980's and 1990's by the Supreme Court that seemed to recognise the special right of the victim to compensation for harm suffered either at the hands of a private criminal or in the course of criminal justice administration.

The Mathura rape case⁶⁸ was perhaps the lowest point of the Indian judiciary, highlighting the blatant insensitivity of the judiciary coupled with weak and ineffective laws relating to rape.

A new era in the Indian victimological thinking began with the initiative taken by the Indian judiciary in the nature of evolving a new kind of compensatory constitutional remedy through articles 32 or 226/227. The starting point would be the case of Rudul Shah v. State of Bihar⁶⁹. In this case, Chief Justice Chandrachud, invoked the extraordinary power vested in the Supreme Court under article 32 to award compensation, for the first time, for the deprivation of fundamental rights. Interestingly, in the case of the State of Punjab v. Ajaib Singh⁷⁰ the Supreme Court went a step further and granted a compensation of Rs. 5 lakhs even after acquitting the accused.

Following this, in the landmark case of Boddhisattwa Gautam v. Subhra Chakraborty⁷¹ the Supreme Court of India evolved creative principles of victimology and victim justice. Firstly, it held that the award of compensation, as an interim relief is necessary so that undue delay in the delivering of justice to a victim of crime is not caused. Secondly, it held that the court had jurisdiction to award such compensation to the victim even when the accused is not convicted, due to the slow progress of the criminal proceedings. These principles evolved by the court were futuristic, perhaps a form of judicial activism; and have been subsequently incorporated into the 2009 amendment to the CrPC⁷².

In the Uttrakhand Stir (Rallyist) case⁷³, the Allahabad High Court delivered a path-breaking judgment in a group of six cases arising out of the incidents in Khatima, Mussoorie and Muzaffarnagar. The brief facts of the case are that twenty four persons were killed, seven women were raped, seventeen were sexually molested while many others were injured and illegally detained as a result of police firing and atrocities committed on a peaceful demonstration for a separate State of Uttaranchal in 1994.

The court in a historic decree awarded Rs. 10 lakh each to deceased victims' families and Rs. 10 lakh for rape victims judging the crime equivalent to death; Rs. 5 lakh to the victims of sexual molestation; and Rs. 2.5 lakh to Rs. 50,000 for less serious injuries. Thus, the court while advancing the cause of human rights and giving more teeth to the constitutional guarantee for a right to live with dignity vide Article 21, declared that the court itself could award compensation in a case of human rights violation.

67 Supra note 5, ¶ 9.1.

68 Tukaram & Anr. v State of Maharashtra, (1978) Crim.L.J. (S.C.) 1864.

69 Rudul Shah v. State of Bihar, (1983) 4 S.C.C. 141, ¶ 9.

70 State of Punjab v. Ajaib Singh, 1995 2 S.C.C. 486, ¶ 9.

71 Boddhisattwa Gautam v. Subhra Chakraborty, (1996) 1 S.C.C. 490.

72 Id., ¶ 17.

73 Uttarakhand Sangharsh Samitee v. State of U.P., (1996) 1 U.P.L.B.E.C. 461.

In the instant case, the State was held vicariously responsible for the crimes committed by its officers and was directed to compensate the victims and was not protected under the doctrine of sovereign immunity wherein the State can avoid criminal liability in the name of 'acts of State'.⁷⁴

In the case of *D.K. Basu v. State of West Bengal*⁷⁵ the Supreme Court held that monetary compensation for redressal by the court is useful. It is perhaps the only effective remedy to 'apply balm to the wounds' of the family members of the deceased victim, who may have been the breadwinner of the family.⁷⁶

However diverging from this trend, in the *A. K. Singh* case⁷⁷, the Supreme Court set aside the High Court's order directing the convicts to furnish compensation to the victims, holding that Rs. 10 lakh was in excess of the required compensation for the crime⁷⁸. This decision was made despite the fact that state functionaries perpetrated this crime against innocent members of a peaceful demonstration.⁷⁹

On the other hand in the recent case of *Chairman, Railway Board v. Chandrima Das*⁸⁰, the Supreme Court ordered the payment of Rs. 10 lakhs as compensation to a Bangladeshi national who was repeatedly raped by Railway employees. The Court upheld the Calcutta High Court's decision that even as a foreign national she was entitled to the fundamental right to life in India, and thus there was a constitutional liability to pay compensation to her⁸¹.

Thus, as observable by the judicial trends, compensation available under a constitutional remedy has been far more readily invoked and amounts of a greater quantum have been granted than under Section 357(3) of the CrPC. The judiciary has to be urged to be liberal in invoking Section 357A and ensure that it is not the nonexercise of discretion by them that become the vanishing point of victim compensation in India.

E. Current Trends

The policy of our criminal justice system is victim-oriented and we have to a certain extent incorporated the idea of compensatory criminal jurisprudence. The problem arises in implementation of this policy. The attitude of the judiciary needs change. The provisions being discretionary, it neither imposes a legal obligation on the judge to order compensation in all suitable cases to the victim of crime, nor does it require reasons to be recorded for not doing so. Similarly, these provisions do not vest in the victims a legal right to be compensated either by the accused or the state for loss or injury caused by the commission of the offence. The victim remains at the mercy of the discretion of the judge for the award of compensation because of the word 'may' in Sections 357(1) and (3) of (1990) 1 S.C.C. 420; *Nilabati Behera v. State of Orissa*, (1993) 2 S.C.C. 746; *Rudal Shah v. State of Bihar*, (1983) 4 S.C.C. 141. CrPC; this being the vanishing point of victim compensation in India. Mere punishment to the accused though it may exhaust the primary function of criminal law, is not fulfilment of the Rule of Law. Hence,

74 Gaur, supra note 4, at 357-58.

75 *D.K. Basu v. State of West Bengal*, (1997) 1 S.C.C. 416, ¶ 44.

76 *Id.*

77 *A.K. Singh v. Uttarakhand Jan Morcha*, (1999) 4 S.C.C. 476.

78 *Id.*, ¶ 11.

79 Gaur, supra note 4, at 358.

80 *Chairman, Railway Board v. Chandrima Das*, (2000) 2 S.C.C. 465. Other cases where the accused was directed to pay compensation as a constitutional remedy: *Saheli, A Woman's Resource Centre v. Commissioner of Police*, (1990) 1 S.C.C. 420; *Nilabati Behera v. State of Orissa*, (1993) 2 S.C.C. 746; *Rudal Shah v. State of Bihar*, (1983) 4 S.C.C. 141.

81 *Chairman, Railway Board v. Chandrima Das*, (2000) 1 S.C.C. 465, ¶ 19.

the court should be liberal in utilising the discretion vested in them in granting compensation to the injured in a criminal case.

It is imperative to convert the discretionary power of the court into a legal mandate requiring it to in all suitable cases, pass compensation orders and when it decides not to do so, make it obligatory to record reasons for not doing so.

From the aforesaid cases we may conclude that the Apex Court in India has set a trend of compensatory criminal justice jurisprudence, which in effect is developing the ground towards restorative justice in our criminal justice system.

IV. CONCLUSION

Unlike in the Western countries, the victims of crime in India do not have a statutory right to be compensated. There is no compulsion on the court to record reasons for not invoking its powers to provide compensation. Moreover, there is no effective institutional mechanism for recovering the ordered compensation from the recalcitrant accused and paying it to the victim.⁸² In light of the above, various efforts have been made towards the establishment of a state funded victim compensation fund as envisaged in the amended law.

Without this it would not only be unjust from the point of view of victims of crimes but it would also result in the negation of the Rule of Law. D.P. Wadhwa, J., of the Supreme Court of India reminded us that in our efforts to look after and protect human rights of a convict we should not forget a crime victim—a ‘forgotten man’ in the criminal justice system—and his reparation and rights. “Criminal justice,” his Lordship stressed, “would look hollow if justice is not done to the victim of the crime”.⁸³ They believe that compensation will at least provide some solace to the victim, even if his lost honour cannot be fully recompensed.

The 14th Law Commission in its Report recommended State compensation, which is justified on the grounds that it is the political, economic and social institutions of the state system that generates crime by poverty, discrimination, unemployment and insecurity.⁸⁴ In its 154th Report on the CrPC influenced by the Tamil Nadu system of “Victim Assistance Fund”, the Commission suggested the setting up of a similar Fund. Even the Malimath Committee was in favour of the establishment of a State funded compensation fund modelled on the Victim Compensation Bill, 1995 prepared by the Indian Society of Victimology and submitted to the Government of India.⁸⁵

Without a substantial fund that has a steady flow of resources, a meaningful state funded victim compensation program will be hard to establish. Given the alarming crime rates, particularly against the vulnerable sections of society, the Fund must have a corpus of at least Rs. 500 crores, which must steadily grow at 100% every year to ensure continued availability of funds.⁸⁶

82 See The Criminal Injuries Compensation Act, 1995 (U.K.). Chapter XXXII of the CrPC contains a few provisions dealing with recovery of ‘fine’ and ‘money’ payable by virtue of any order made under the CrPC. However, they are insufficient.

83 VIBHUTE, supra note 2, at 389-390. Strangely, the Committee did not outline or attach the Bill to the Report, nor did it discuss the NLSIU compensation model. Did it not think it worthwhile to refer to other suggestions or was the Committee blissfully unaware of the existence of such suggestions?

84 Article 41 of the Constitution mandates that the State shall ‘secure the right to public assistance in cases of disablement and other cases of undeserved want’.

85 VIBHUTE, supra note 2, at 389-390. Strangely, the Committee did not outline or attach the Bill to the Report, nor did it discuss the NLSIU compensation model. Did it not think it worthwhile to refer to other suggestions or was the Committee blissfully unaware of the existence of such suggestions?

86 Menon, supra note 45, at 364.

There are certain primary impediments in the establishment and functioning of victim compensation. Firstly, only a small number of accused are actually apprehended and convicted.⁸⁷ Secondly, the accused are generally not capable of providing compensation to the victim as they are usually from the lowest socio-economic strata of society and thereafter earnings by the offender as a prisoner would not be sufficient to pay the compensation.

Since victims as well as the offenders in most cases are usually poor⁸⁸, compensation cannot alone solve the problems of the victim of crime. Hence, it is imperative that a consolidated state funded victim welfare fund should be created on a statutory basis, which will be designed to meet both the immediate financial assistance that some victims in distress will need, inclusive of medical and hospitalisation expenses, along with compensation.

Consequently, there arises an urgent need to establish a victim assistance compensation board to the victim of the crime. Therefore, it is noteworthy and progressive that the Government of India has come forward with a scheme/programme to provide compensation and assistance to the victims of crime for their loss or injury.

The 2008 amendment to the CrPC dealing with the compensation of victims is yet to be notified. This is a reflection of the apathy of our society towards the suffering of victims of crime. However, it is heartening to see that the Maharashtra government is in the process of drafting a victim rehabilitation scheme as envisaged by Section 357A.⁸⁹

According to the state government, annually 5,000-6,000 cases of severe injuries are registered in the state.⁹⁰

In July 2011, the Maharashtra government announced that it would provide compensation to the victims of sexual assault and other forms of violence, who suffer severe injuries, or their kin in case of fatalities.⁹¹ This is not only for physical but also mental trauma suffered by an individual. The compensation amounts and criteria for entitlement are being outlined. Such a policy has already been implemented in Punjab, with a compensation of Rs. 1 lakh being provided for the loss of life, Rs. 40,000 for over 40% damage to a body organ, Rs. 30,000 in case of rape and Rs. 20,000 for an injury that causes mental trauma.⁹²

However, it must be remembered that in spite of the State's obligation to promote general welfare, as enshrined in the Directive Principles of State Policy⁹³, the quantum of compensation payable is for the State to decide, on the basis of its economic resources and the legitimate interests of the victims. Thus, this right is a qualified one, with the State prioritizing who receives compensation and in what measure.

Ultimately, the efficacy of the law and its social utility depends largely on the manner and the extent of its application by the courts. A good law badly administered may fail in its social purpose and if overlooked in practise, will fail in purpose and utility. Section 357A has

87 Id. at 362.

88 Gaur, supra note 4, at 351.

89 PrafullaMarpakwar, PrithvirajChavan Plans to Draft Package for Terror, Riot Victims, TIMES OF INDIA, Sept. 14, 2011, at 3, available at http://articles.timesofindia.indiatimes.com/2011-09-14/mumbai/30153912_1_rehabilitation-package-terror-victims-riot-victims.

90 Id.

91 Id.

92 Id.

93 Article 38 of the Constitution: "The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life".

a social purpose to serve and has to be applied in appropriate cases. The Law Commission of India has not only admitted the fact that they are “not particularly liberal” in utilising these provisions but also observed: “it is regrettable that our courts do not exercise their statutory powers under this section as freely and liberally as they could be desired”.⁹⁴

The victim compensation law as it stands after the 2009 amendment to the CrPC is holistic, however, if the judges continue to not exercise their discretion and invoke these provisions, these provisions will remain disused. The judges’ discretion should not become the vanishing point of victim compensation laws.

□□□

94 LAW COMMISSION OF INDIA, FORTY FIRST REPORT ON THE CODE OF CRIMINAL PROCEDURE, 1898 (1969), at 356.

Compensation and Rehabilitation of Rape Survivors A Constitutional Right

¹Mukesh Yadav, ²Pramendra Singh Thakur, ³Pooja Rastogi

Abstract

Supreme Court of India recently observed that no compensation can be adequate nor can it be of any respite for the victim but as the State has failed in protecting such serious violation of a victim's fundamental right, the State is duty bound to provide compensation, which may help in the victim's rehabilitation. The humiliation or the reputation that is snuffed out cannot be recompensed but then monetary compensation will at least provide some solace.

Cases of rape and sexual violence against women and children are increasing throughout India in spite of post Nirbhaya amendments in the Criminal Law in 2013 and enactment of other special statute.

This paper deals with modern approach of penology and victimology which is striking a balance between rights of accused, victim and society. Various statutory provisions and decisions of the Supreme Court have been studied and analysed to highlight the need for compensation and rehabilitation of rape survivors as a constitutional obligation for human rights cause. Factors considered for deciding quantum of compensation, mechanism to fast track for delivery of compensatory relief and long term rehabilitation has been discussed and recommendation for implementation. Critical analysis of Victim Compensation Schemes (VCS) in various states after amendments and insertion of Section 357 A, in Criminal Amendment Acts, 2009 and 2013 was done in this paper.

Key Words: Compensation, Rehabilitation, Restitution, Rape, Crime against Women, Sexual Harassment of Women

Introduction:

Article 21 of the Constitution guarantees 'right to life', which includes protection of life and liberty of all members of the society. 'Vigilantism' as a phenomenon is on a rise in our [Indian] society. This is dangerous and can pose serious threat to the Rule of Law and peace in society.

However, the desire for retribution leading to the victims taking 'law in their own hands' can be effectively checked only where the victims perceive that the criminal justice system will assure them justice and protection.

The need to address cry of victims of crime, for whom the Constitution in its Preamble holds out a guarantee for 'justice' is paramount. The victims have right to get justice, to remedy the harm suffered as a result of crime.

1 Corresponding Author:

Dean/Principal

Siddhant School of Medical Science and Hospital Mainpuri, UP

E-mail: drmukesh65@yahoo.co.in

2 Assoc. Professor Dept. of Forensic Medicine M G M Medical College, Indore

3 Prof & HOD, Dept. of Forensic Medicine, School of Medical Sciences & Research, Sharda University, Greater Noida, UP DOR: 12.07.2014 DOA: 22.09.2014

This right is different from and independent of the right to retribution, responsibility of which has been assumed by the State in a society governed by Rule of Law. But if the State fails in discharging this responsibility, the State must still provide a mechanism to ensure that the victim's right to be compensated for his injury is not ignored or defeated.

Right of access to justice under Article 39-A and principle of fair trial mandate right to legal aid to the victim of the crime. It also mandates protection to witnesses, counselling and medical aid to the victims of the bereaved family and in appropriate cases, rehabilitation measures including monetary compensation.

It is a paradox that victim of a road accident gets compensation under no fault theory, but the victim of crime does not get any compensation, except in some cases where the accused is held guilty, which does not happen in a large percentage of cases.

In **S. S. Ahluwalia vs. UOI** (2001) 4 SCC 452, Hon'ble Supreme Court held that in expanded meaning attributed to Article 21 of the Constitution, where the State fails to protect the life of the people, it could not escape the liability to pay compensation to the victims.

Global Scenario:

Scenario in UK:

Set up in 1964 the Criminal Injuries Compensation Authority is responsible for administering the Criminal Injuries Compensation Scheme throughout England, Wales and Scotland.

From 1996 each injury was awarded a specific fixed compensation ranging from 1000 UK Pounds to 250000 UK Pounds. Apart from these; the applicants are also eligible to get compensation for earnings and special expenses for up to UK 250000 Pounds. [5]

The Ministry of Justice now funds the entire scheme; it was formerly funded by the Home Office. Victims as well as their relatives/dependants are entitled for compensation for personal injuries as well fatal injuries. Compensation is awarded to cover costs of medical expenses, funeral expenses, and loss of earnings, mental stress and trauma, medical expenses for special care and also for loss of reputation.

While arriving at the decision to award compensation the Authority looks into the previous criminal record of the applicant, the relevant police reports, and medical reports among other criteria. A right to appeal against the decision of the Authority is also provided. [5]

Scenario in Canada:

Several provinces in Canada have enacted laws ensuring victims of crimes are compensated. The Ontario Compensation for Victims of Crime Act, 1990 provides for the establishment of a Criminal Injuries Compensation Board. In its terms, victims their dependants or by persons looking after them can claim compensation.

Heads of compensation cover expenses actually and reasonably incurred or to be incurred as a result of the victim's injury or death; pecuniary loss incurred by the victim as a result of total or partial disability affecting the victim's capacity for work; pecuniary loss incurred by dependants as a result of the victim's death; pain and suffering; support of a child born as a result of rape and other pecuniary loss resulting from the victim's injury and any expense that, in the opinion of the Board, it is reasonable to incur.

Apart from these, the Board is also entitled to award compensation in lieu of any common law rights accruing to the victim. Interestingly, under this enactment, compensation can be awarded irrespective of the factum of conviction, thereby signalling the change from a deterrent/retributive model to a rehabilitative one. The compensation can be administered through a lump sum payment or instalments or under directions of the Board. [5]

Scenario in USA and Australia:

A similar regime is prevalent though state legislations in the United States and Australia as well, where several states have enacted legislations and through their respective budget allocations ensured that victims of crimes are compensated accordingly.

In Western Australia for example, under the Criminal Injuries Compensation Act 2003, compensation can be sought for an incident reported to the police regardless of whether a person has been identified, charged or convicted of the offence. Compensation can be awarded for suffering bodily harm, mental or nervous shock, or pregnancy, resulting from an offence.

Compensation may cover: pain and suffering; loss of enjoyment of life; loss of income; medical expenses and other incidental expenses, such as travel for medical treatment or damage of clothing. [5]

Indian Scenario:

Compensation and Constitution:

Rape involves violation of fundamental rights under Article 21 of the Indian Constitution. Compensation for the violation of fundamental rights is given by way of penalizing the State for violating the fundamental rights guaranteed by the Constitution of India and for the breach of its public law duty. This compensation is in the nature of 'exemplary damages' awarded against the wrongdoer for the breach of a public law duty. This is apart from and in addition to compensation granted for the loss or injury under the law of torts.

"It is a weakness of our jurisprudence that the victims of the crime, and the distress of the dependants of the prisoner, do not attract the attention of the law. Indeed, victim reparation is still the vanishing point of our criminal law. This is a deficiency in the system which must be rectified by the Legislature. We can only draw attention in this matter." - Justice Krishna Ayyar, 1980 [Source: "Rattan Singh vs. State of Punjab" AIR 1980 Supreme Court 84]

Thus, modern approach of victimology acknowledge that a crime victim has right to be adequately compensated, rehabilitated and repaired irrespective of identification and prosecution of offender and the payment of such compensation should be made by state.

Compensatory Justice:

Criminal jurisprudence has moved beyond the traditional domains of retributive and deterrent values. The shift is increasingly towards victim centric compensatory models of justice. Many societies have forged mechanisms to address these issues.

The idea underlying compensatory justice is not merely to rehabilitate the victim, but also leads to a regime where societal values in seeing such crimes as aberrations, entitling the victim to some form of compensation due to the stark intensity of the crime.

Therefore, the concept of a publicly funded and administered body to compensate victims of violent crime has been in practice in many countries across the world for quite a while. Compensation is granted not merely when the State is at fault but also when the crime is violent and serious; and thus the role of the State assumes the welfare hue.

Scheme drafted by the NCW:

In India, pursuant to the Supreme Court directive in the Delhi Domestic Working Women's Forum case [6], the National Commission for Women drafted the Scheme for the Rehabilitation for Victims of Rape, 2005.

The scheme provided for the setting up of Criminal Injuries and Rehabilitation Board at the District and State level and a National Criminal Injuries and Rehabilitation Board.

The scheme gives details about the constitution, functions and the budgetary allocation of the Authorities constituted under it.

It provides for compensating rape victims, irrespective of whether the perpetrator has been brought to justice. It provides for legal aid and other measures that will help such victims. However, there is nothing suggestive of any further thinking on these issues, or executive will to take the thought further.

SC in Bodhtswa case, 1996, recognized the right of the victim for compensation: Court referred previous judgment of Delhi Domestic Working Women's Forum, case of 1994. This decision recognises the right of the victim for compensation by providing that it shall be awarded by the Court on conviction of the offender subject to the finalisation of Scheme by the Central Government. If the Court trying an offence of rape has jurisdiction to award the compensation at the final stage, there is no reason to deny to the Court the right to award interim compensation which should also be provided in the Scheme.

On the basis of principles set out in the aforesaid decision in Delhi Domestic Working Women's Forum, the jurisdiction to pay interim compensation shall be treated to be part of the overall jurisdiction of the Courts trying the offences of rape which, as pointed out above is an offence against basic human rights

Justifications for Compensation:

Various justifications for compensation have been used, such as:

1. Benefit to the victims,
2. Symbolic social recognition for the victim's suffering,
3. Deterrent effects on the offender as also the reformatory effects on the offender as the paying of compensation has an "intrinsic moral value of its own". [5]

SC Views on Compensation: Need for long-term Rehabilitation:

"Survivors of rape should be compensated by giving them half of the property of the rapist(s) as compensation in order to rehabilitate them in Society. - P. Sathasivam, CJI, 23rd Jan 2014 Court further added that "Merely providing interim measures for their stay may protect them for time being but long-term rehabilitation is needed as they (Family Members) are all material witnesses and likely to be socially ostracized.- P. Sathasivam, CJI, 23rd Jan 2014

Mandatory Duty of the Court:

In “Ankush Shivaji Gaikwad vs. State of Maharashtra”, 2013 [7] the Supreme Court emphasized that victim is not to be forgotten in criminal justice system and Section 357 Cr.P.C. should be read as imposing mandatory duty on the Court to apply its mind to the question of awarding compensation in every case.

Interim Compensation and Vicarious Liability:

In addition, compensation may be given for mental harassment, pain, suffering, and for loss of earnings. The State is also liable for fundamental rights violations committed by its servants, and should pay compensation for such injuries. In cases of SHW, women may seek compensation for the violation of their fundamental rights.

Vicarious Liability of Government:

It was held that the Government will be vicariously liable for the tortuous act of its employees. It was on the basis of the above facts that the High Court had awarded a sum of Rs.10 lacs as compensation for Smt. Hanuffa Khatoon as the High Court was of the opinion that the rape was committed at the building (Rail Yatri Niwas) belonging to the Railways and was perpetrated by the Railway employees.

Many states are yet to finalise a scheme for compensation of victims of crime, including violence against women, nearly four years after the Centre notified the provision for providing relief by amending the Cr.P.C. After the notification of a new section in the Cr.P.C. in December 2009, the Union Home Ministry had initiated the process of making states notify the Victim Compensation Scheme in September 2010 but only four states came up with a scheme within one year. Sikkim was the first to launch a scheme in June 2011, while Karnataka notified it in February, 2012.

According to senior Home Ministry official the seven states yet to fall in line are Jammu and Kashmir, Kerala, Tamil Nadu, Madhya Pradesh, Maharashtra, Nagaland and Uttarakhand. The Ministry had conducted seven co-ordination meetings through video conferencing with Home Secretaries of these states since May 2011.

“The ministry is overseeing the notification and implementation of Victim Compensation Scheme in states and Union Territories,” the official said. As of now, 17 states and seven Union Territories have notified the scheme while four are on the verge of doing it. The Ministry has received the draft notifications from Andhra Pradesh, Punjab, Uttar Pradesh and Meghalaya.

The official said the ministry would be asking the seven remaining states to speed up the process. The provision came into being after the CrPC was amended by adding a new Section 357A which dealt with the modalities for compensating victims of crime.

According to an analysis of the notifications issued, Goa has fixed the maximum compensation for rape at Rs ten lakh, followed by seven Union Territories at Rs 3 lakh. The Sikkim State government has framed a scheme to provide compensation to victims who have suffered loss or injury as a result of a crime. Called the “Sikkim Compensation to Victims or his Dependents Schemes”, this was instituted in mid-2011 and not only provides for compensating victims but also their dependents according to the nature of loss or injury suffered. The compensation amount ranges from a minimum of Rs. 20000 [for simple loss or injury to a child victim], to Rs.2

lakh as compensation for loss of life due to crime. The scheme has been framed under the Code of Criminal Procedure.

Status of Victim Compensation Scheme in India:

Scheme in place:

1. Rajasthan (Rs.2.00 Lakhs)
2. Assam (Rs.1.75 Lakhs)
3. West Bengal (Rs.20000 to 30000)
4. Union Territories (Rs.3.00 lakhs)
5. Goa (Rs.10 Lakhs)
6. Haryana (Rs.3.00 Lakhs)
7. Delhi (Rs.3.00 to Rs.5.00 Lakhs)

Yet to take initiative for drafting the Scheme:

1. Jammu and Kashmir,
2. Kerala,
3. Tamil Nadu,
4. Madhya Pradesh,
5. Maharashtra,
6. Nagaland
7. Uttarakhand

Delhi is now after Delhi High Court intervention and amendment proposed in 2014 has enhanced compensation up to Rs. 5 Lakh.

Scenario in State of Rajasthan, 2011:

In an appeal arises from a decision of the Rajasthan High Court in a PIL filed by a Legislator and social activist complaining of arbitrary and discriminatory disbursement of relief under the Chief Minister's Relief Fund (for short 'Relief fund') under the Rajasthan Chief Minister's Relief Fund Rules, 1999 (for short, 'the Relief Fund Rules'). [Para 2]

The respondent alleged that during the period January 2004 to August 2005, challans/charge-sheets were filed in 392 cases relating to rape of minor girls; that out of them, 377 minor girls, did not get any relief or assistance from the Relief Fund, 13 were granted relief ranging from Rs.10000 to 50000. One victim (minor 'K') was given Rs.395000 on 11.8.2004 and another victim (minor 'S') was given Rs.500000 on 25.6.2005. [Para 2]

Prayer was made for a direction to the appellants to give to all rape victims, who had not been granted any monetary relief or who had been granted a negligibly small relief, monetary relief of Rs.5 lakhs and failure to give monetary relief, or failure to give a uniform monetary help, to all victims of rape from the Relief Fund is illegal, arbitrary and unconstitutional.

Scenario in Haryana:

In exercise of the powers conferred by section 357-A Cr.P.C. 1973 (Act 2 of 1974), the Governor of Haryana in co-ordination with the Central Government framed the Haryana Victim Compensation Scheme, 2013 for providing funds for the purpose of compensation to the victim or his/her dependents who have suffered loss or injury as a result of the crime and who require rehabilitation. The Scheme was notified Vide Notification dated the 3rd April, 2013, No.S.C. 41/C.A. 2/1974/S.357-A/2013.

Scenario in Delhi:

The Delhi Victim Compensation Scheme, 2011 and (Amendment) 2014 has made provisions related to following issues:

- ❖ Role of various authorities
- ❖ Delhi State Legal Service Authority
- ❖ Role of Police
- ❖ Role of Divisional Commissioner
- ❖ Role of High Court
- ❖ Role of Victim

Delhi High Court has shown serious concern related to compensation and rehabilitation of rape victims. Following issues need special consideration:

- ❖ Man Power Shortage
- ❖ Infrastructure and Equipment Shortage
- ❖ Role of Forensic Sciences (including Forensic Medicine) in the criminal investigations process and the justice dispensation system
- ❖ Issue of Compensation

Terming the delay in paying compensation to victims of sexual violence as “unacceptable”, the Delhi high court ordered payment of nearly Rs.1.7 crore lying with the government. On 16.04.2014, a Division Bench of Acting Chief Justice B D Ahmed and Justice S Mridul asked the Delhi government to ensure that the money is disbursed to the 221 survivors within two weeks, after the issue is decided by authorities including the Delhi State Legal Services Authority (DSLISA).

The court was upset that despite its clear orders, the state government had delayed in compensating the victims. It warned that if the government doesn't fall in line, it will be constrained to treat the failure as contempt of court. The Delhi High Court also pulled up DSLISA for delaying the release of compensation, and for taking long in deciding prima facie if the case is genuine.

HC also issued other key directions while hearing a case it initiated suo moto after the Nirbhaya incident. The court is monitoring steps to improve the overall safety of women in Delhi, including compensation to survivors of sexual violence such as rape, setting up more CFSL facilities, and induction of more women policemen.

Lengthy Process, Little Action:

Only 483 of 3000 cases referred for relief in 2 years; Of the 483 cases, compensation was awarded in 304 cases till April 2014

- ❖ Fund Disbursal Slow
- ❖ Why the delay?
- ❖ Lack of awareness among survivors, police and lawyers about survivor's right to be compensated
- ❖ Involvement of multiple agencies-police, Delhi State Legal Service Authority (DSLISA)
- ❖ Divisional Commissioner-who often blame each other for delay and files keep shuttling among agencies
- ❖ Most of the times, victims don't get compensation as police fail to forward cases to DSLISA, the sanctioning body.
- ❖ Files get stuck with divisional commissioner who is responsible for disbursing funds
- ❖ In past two and a half years, Govt. has used only Rs.2.06 crore of the allotted Rs.15Crore
- ❖ Step 1: Police after FIR has to inform (recommend) to the DSLISA for award of Compensation
- ❖ Step 2: DSLISA has to hold an Inquiry to see the suitability of case for award of Compensation and submit recommendation to the Divisional Commissioner
- ❖ Step 3: Divisional Commissioner has to disburse the Compensation Awarded to Rape Victim Survivors/Legal Kins
- ❖ Step 4: Victim and/or her representative can approach the High Court for award of Compensation (within 3 years of incident)

Limitations:

- ❖ DSLISA can't award compensation on its own, recommendation by police a must
- ❖ Courts can give compensation or refer it to DSLISA only if survivor or family moves an application before it
- ❖ If the offender is absconding or unidentified, survivor has to claim compensation within 3 years of the incident

Solutions:

- ❖ Creating awareness and sensitizing police, survivors and lawyers
- ❖ Notification of the amended scheme which aims at expediting the process
- ❖ Make it a one-window facility
- ❖ DSLISA should decide within a month if a case is fit for compensation
- ❖ Compliance of a recent Delhi High Court order according to which Divisional Commissioner should not take more than two weeks to disburse compensation

Making the Scheme Better:

- ❖ Amended Delhi Victim's Compensation Scheme aims at expediting the process of providing compensation to rape and other assault victims
- ❖ Amended scheme will help in rehabilitating all sexual victims
- ❖ Victims of rape will be categorized under Sub-categories of gang rape and unnatural sexual assault
- ❖ Victim of unnatural sexual assault can get Rs.2-5 lakh

Enhanced Compensation and Speedy Disbursement

- ❖ Gang rape victims can get a compensation of Rs.3-7 lakh
- ❖ Maximum compensation for loss of life up from Rs.5 lakh to Rs.10 lakh
- ❖ Maximum compensation for rape increased from Rs.3 lakh to Rs.5 lakh
- ❖ Relief amount for other injuries also up by Rs.1-2 lakh
- ❖ Victims of acid attacks and burning will be compensated, depending upon nature of injuries.
- ❖ Victims of acid attacks and burning will be compensated, depending upon nature of injuries.

Scenario in West Bengal:

In exercise of the powers conferred by Section 357A by the Code of Criminal Procedure 1973 (2 of 1974) the Governor is pleased to declare the West Bengal Victim Compensation Scheme, 2012 for providing compensation to those victims of crimes or his/her dependents who have suffered loss or injury and who require rehabilitation vide notification No.5299-PL, Dated 1st November, 2012, the Kolkata Gazette Notification dated 8th November 2012, Registered No.WB/SC-247, No.WB (Part-I)/2012/SAR-408. The West Bengal Government has announced that the state will provide monetary compensation to women who are raped. In a decision taken on Thursday, it said that minors, who are raped, will be given compensation of Rs. 30,000 and adult women will be given Rs. 20000. The state cabinet approved a compensation scheme for victims of criminal cases and natural disasters. Compensation will also be given in case of deaths and injury causing handicap. The decision to provide compensation will be taken by committees headed by district magistrates. Scenario in U.P.: The Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, enacted in 1989, provides monetary compensation to victims of rape. In Uttar Pradesh, a law is in existence since the 1970s, gives compensation of Rs. 5000 if the woman raped is from a scheduled caste or tribe.

Scenario in Punjab:

Victim Compensation Scheme of Punjab Government virtually non-functional, as no funds released by the Government to the District Legal Services Authority in Punjab- the Courts also do not appear to be sensitized towards this Scheme. RTI information procured from the various District Legal Services Authorities in Punjab reveals that these District Legal Services Authorities have not received any grant from the State Government.

The information received from Secretaries of District Legal Services Authorities of Ludhiana, Faridkot, Kapurthala, Fatehgarh Sahib, Barnala, Sri Muktsar Sahib, Bathinda and Fazilka have

stated in their reply to RTI applications that these Authorities have not given any compensation for the loss of life/murder/Rape/loss of limb etc. to the victim under the Compensation Scheme, 2011, later on modified vide notification dated 17.6.2013.

Domestic Violence against Women Act, 2005 reads Compensation Order:

“Section 22: In addition to other reliefs as may be granted under this Act, the Magistrate may on an application being made by the aggrieved person, pass an order directing the respondent to pay compensation and damages for the injuries including mental torture and emotional distress, caused by the act of domestic violence committed by that respondent.

Need for creation of ‘Victim Compensation Fund’

The ‘Victim Compensation Fund’ shall comprise the following:

1. Budgetary allocation for which necessary provisions shall be made in the Annual Budget by the (Concerned) Government.
2. Receipt of amount of fines imposed under section 357 Cr.P.C., and ordered to be deposited by the courts in the Victim Compensation Fund
3. Amount of compensation recovered from the wrongdoer/accused under clause 9 of the scheme.
4. Donations/contributions from International /National/ Philanthropist/ Charitable Institutions /Organizations and Individuals.

Only few States has made these provisions for creation of “Victim Compensation Fund”. State of Haryana and Delhi are few examples in this regard.

Compensation & Rehabilitation Provisions in POCSA, 2012 [15]:

In appropriate cases, the Special Court may, in addition to the punishment, direct payment of such compensation as may be prescribed to the child for any physical or mental trauma caused to him or for immediate rehabilitation of such child. [Chapter VIII, 33 (8)] [1]

Rule making Power of Central Government:

The Central Government may, by notification in the Official Gazette, make rules for carrying out the purpose of this Act. [Chapter IX, 45 (1)] [1]

Provisions further emphasize that in particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:

- a. The qualifications and experience of, and the fees payable to, a translator or an interpreter; a special educator or any person familiar with the manner of communication of the child or an expert in that field, under sub-section (4) of section 19; sub-sections (2) and (3) of section 26 and section 38; [Chapter IX, 45 (2) (a)] [1]

- b. Care and protection and emergency medical treatment of the child under sub-section (5) section 19; [Chapter IX, 45 (2) (b)] [1]
- c. The payment of compensation under sub-section (8) of section 33; [Chapter IX, 45 (2) (c)] [1]
- d. The manner of periodic monitoring of the provisions of the Act under sub-section (1) of section 44. [Chapter IX, 45 (2) (d)] [1]

Provisions of Compensation in the SHW at Workplace Act, 2013 [16]:

On the completion of an inquiry under this Act, the Internal Committee or the Local Committee, as the case may be, shall provide a report of its findings to the employer, or as the case may be, the District Officer within a period of ten days from the date of completion of the inquiry and such report be made available to the concerned parties. [Para 13 (1)] [2]

Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be:

- ❖ To take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed; [Para 13 (3)(i)] [2]
- ❖ To deduct, notwithstanding anything in the service rules applicable to the respondent, from the salary or wages of the respondent such sum as it may determine, in accordance with the provisions of section 15; [Para 13 (3)(ii)] [2]

Provided that in case the employer is unable to make such deduction from the salary of the respondent due to his being absent from duty or cessation of employment it may direct to the respondent to pay such sum to the aggrieved woman;

Provided further that in case the respondent fails to pay the sum referred to in clause (ii), the Internal Committee or, the Local Committee as the case may be, may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.

The employer or the District Officer shall act upon the recommendation within sixty days of its receipt by him. [Para 13 (4)] [2]

Determination of Compensation:

For the purpose of determining the sums to be paid to the aggrieved woman under clause (ii) of sub-section 13, the Internal Committee or the Local Committee, as the case may be, shall have regard to:

- (a) The mental trauma, pain, suffering and emotional distress caused to the aggrieved woman;
- (b) The loss in the career opportunity due to the incident of sexual harassment;
- (c) Medical expenses incurred by the victim for physical or psychiatric treatment;
- (d) The income and financial status of the respondent;
- (e) Feasibility of such payment in lump sum or in instalments. [Para 15 (a, b, c, d, e)] [2]

Criminal Law Amendment Act, 2013 [17]:

376D. Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this section shall be paid to the victim Provision of Free Treatment:

After section 357A of the Code of Criminal Procedure, the following sections shall be inserted, namely:

“357B: The compensation payable by the State Government under section 357A shall be in addition to the payment of fine to the victim under section 326A or section 376D of the Indian Penal Code, 45 of 1860. [Para 23] [3]

357C. All hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, shall immediately, provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under section 326A, 376, 376A, 376B, 376C, 376D or section 376E of the Indian Penal Code, 45 of 1860 and shall immediately inform the police of such incident.” [Para 23] [3]

Summary and Conclusions:

It appears that Courts do not appear to be adequately sensitized towards the Scheme, due to which cases in which compensation has been awarded are very few.

From the above line of cases, it becomes very clear, that, a sentence of imprisonment can be granted for default in payment of compensation awarded under Section 357(3) of Cr.PC. The whole purpose of the provision is to accommodate the interests of the victims in the criminal justice system. Sometimes the situation becomes such that there is no purpose is served by keeping a person behind bars. Instead directing the accused to pay an amount of compensation to the victim or affected party can ensure delivery of total justice.

Therefore, this grant of compensation is sometimes in lieu of sending a person behind bars or in addition to a very light sentence of imprisonment. Hence on default of payment of this compensation, there must be a just recourse. Not imposing a sentence of imprisonment would mean allowing the accused to get away without paying the compensation and imposing another fine would be impractical as it would mean imposing a fine upon another fine and therefore would not ensure proper enforcement of the order of compensation.

While passing an order under Section 357(3), it is imperative for the courts to look at the ability and the capacity of the accused to pay the same amount as has been laid down by the cases above, otherwise the very purpose of granting an order of compensation would stand defeated. [Para 27] Compensation and Rehabilitation of survivors of rape is need of the hour in view of the violation of fundamental rights of the victim under Article 21 of the Indian Constitution.

Court can play a great role in delivery of justice by awarding compensation and directions for rehabilitation of the victims.

Ends of justice can be served if all the stakeholders do their duty in letter and spirit of the Indian Constitution and other relevant Statutory provisions related to compensation and rehabilitation of victims of crime especially victim of rape. There is need to create awareness and education about these rights among all the sections of the society by organizing CMEs, Seminar and Conferences.

In the words of Sawami Sivananda “Every effect has a cause. Every consequence has an antecedent. There must be perfect balance between the cause and effect, between the antecedent and consequence. The law of compensation keeps up the balance, and establishes peace, concord, equilibrium, harmony and justice in Nature.”

References:

1. Shemin Joy. Seven states laggard on giving relief to rape, acid attack victims. September 24, 2013, DHNS, Available at: <http://www.deccanherald.com/content/359195/seven-states-laggard-giving-relief.html>
2. Victim Compensation Scheme: RTI says Punjab Not Releases Grants. February 07, 2014, Face2News Bureau, Available at: <http://www.face2news.com/news/5240-victim-compensation-scheme-punjab-not-release-grants.aspx>
3. The Punjab Compensation Scheme, 2011, later on modified vide notification dated June 17th, 2013.
4. 2 years on, no compensation paid to victims in 8 districts. Tribune News Service, Chandigarh, February 7, 2014, Available at: <http://www.tribuneindia.com/2014/20140208/punjab.htm#14>
5. S. Ravindra Bhat, J. Ms.X (substituted as per directions in para 26 of this Judgment) vs. State of Delhi NCT & Another, W.P. (C) No. 2738/2006, Date of Judgment: 28th January, 2008, Delhi High Court, Available at: <http://lobis.nic.in/dhc/SRB/judgement/09-04-2008/SRB28012008CW27382006.pdf>
6. Delhi Domestic Working Women's Forum vs. Union of India, (1995) 1 SCC 14.
7. Common Cause, A Registered Society vs. Union of India, (1999) 6 SCC 667
8. Chairman Railway Board vs. Chandrima Das, (2000) 2 SCC 465
9. D.K. Basu vs. State of W.B, (1997) 1 SCC 416.
10. Rudul Shah vs. State of Bihar, (1983) 4 SCC 141.
11. Bodhisattwa Gautam vs. Shubra Chakraborty (1996) 1 SCC 490.
12. Chairman Railway Board vs. Chandrima Das, (2000) 2 SCC 465.
13. The Declaration on the Elimination of Violence against Women, by its resolution dated 20.12.1993. 14. West Bengal Victim Compensation Scheme, 2012 Available at: <http://wbcdwdsw.gov.in/wd/dsw/wbvc-2012.pdf>
15. The Protection of Children against Sexual Offences Act, 2012, (Act No.32 of 2012)
16. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Act No.14 of 2013) Received Assent of the President of India w.e.f. 23rd April 2013 Notified on 6th December 2013
17. The Criminal Law (Amendment) Act, 2013 (Act No. 13 of 2013 [2nd April, 2013] It shall be deemed to have come into force on the 3rd day of February, 2013.



Compensation to Victims

A Study With Special Reference to S. 357 Of The Code Of Criminal Procedure, 1973

*Rajesh Suman**

INTRODUCTION

The scant attention the Indian legal system gives to the victims¹ of crimes has been rightly acknowledged by scholars² and governmental bodies.³ Many unforeseeable events which cause disabilities or death of victims result from the action or negligence of private entities such as individuals, industries and corporations. Such events give rise to criminal liability in cases involving criminal negligence and in cases of volitional acts. These events also give rise to civil liability to provide compensation to the victims. Whereas adjudication of the criminal liability is generally initiated at the instance of state, the victim or his dependants are left alone to take recourse to civil court for compensation against crime in such events. Those who approach the civil courts have to suffer the long drawn and expensive process of the civil litigation which in many instances frustrates the overall purpose of compensation. It is often observed that in the absence of timely and reasonable compensation to the dependants of disabled or dead victims especially of crimes, the families get devastated and dependant women, children and elderly fall prey to life of chaos, misery and sometimes to criminality.

The response of the executive and judicial system after the Bhopal gas tragedy signify their indifference towards the victims of this tragedy in ensuring proper medical care and adequate compensation on time. This tragedy exposed the inadequacy of compensation jurisprudence for mass torts such as industrial disasters under the Indian legal system during that time.⁴

* Law Associate, National Judicial Academy, Bhopal.

I am deeply grateful to Dr. K.N. Chandrasekharan Pillai for reviewing the manuscript of this paper many times in a meticulous manner and suggesting important changes. His valuable guidance and constant encouragement have helped me a lot in completion of this paper. I am also thankful to my colleagues Ms. Nidhi Gupta and Mr. Neeraj Tiwari for reviewing the manuscript and giving critical input. Their feedback have helped in significantly improving the content of the paper. The responsibility of error, if any, however, solely lies with me.

- 1 S.2 (wa), Cr.P.C. defines victim as a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir. Throughout this paper the word 'victim' will imply the meaning as given under s.2 (wa), Cr.P.C.
- 2 See K.D. Gaur, "Justice to Victims of Crime : A Human Rights Approach" in Dr. K.I. Vibhute (ed.), Criminal Justice (Eastern Book Company, 2004) and S. Muralidhar, "Rights of the victim in the Indian Criminal Justice System", available at <http://www/ielrc.org/> [Visited on July 10, 2012].
- 3 Government of India, Report : Committee on Reforms of Criminal Justice System (Ministry of Home Affairs, 2003).
- 4 The initiative taken by Mr. M.W. Deo, then District Judge of Bhopal, in carving out the unprecedented judicial remedy to provide interim compensation of rupees 350 crores to the victim of Bhopal Gas Disaster is a landmark of judicial creativity at subordinate court level. The judgment delivered by him clearly reveals the absence of proper compensation mechanism for mass tort of such nature in India during that time. By taking recourse to ss. 94 and 151 of the Code of Civil Procedure, 1908, Mr. M.W. Deo rejected all the arguments raised by the counsel for Union Carbide Corporation Mr. Falli S. Nariman against the interim compensation. [See Gas Claim Case No. 1113 of 1986]. Subsequent to this tragedy, in another incident of oleum gas leak, the Supreme Court of India developed the principle of absolute liability to deal with such lethal accidents. The Supreme Court in M.C. Mehta and another v. Union of India and others [(1987) 1 SCC 395], evolved the rule of absolute liability of an enterprise engaged in a hazardous or inherently dangerous activity having potential threat to the health and safety of the persons working in the factory and residing in the surrounding area. This liability is consisted of absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprises is required to ensure highest standard of safety and in case of any accident it is absolutely liable to compensate all the

Gradually there have also come into existence various laws to grant compensation to the victims of industrial accidents and disasters. These laws give effect to fundamental obligation of the State to ensure the welfare of its citizens.⁵ With legislation dealing with compensation, the Indian legal system can now be considered to be well-equipped with numerous laws which have provisions for interim relief and compensation to victims in case of disability or death.

The plight of the victim in criminal cases has been highlighted by the Committee on Reforms of Criminal Justice System⁶ [hereinafter referred to as Malimath Committee]. Observing that neglect of victims affects fair administration of criminal justice, the Committee records thus:

Very early in the deliberations of the Committee, it was recognized that victims do not get at present the legal rights and protection they deserve to play their just role in criminal proceedings which tend to result in disinterestedness in the proceedings and consequent distortions in criminal justice administration. In every interaction the Committee had with the police, the Judges, the prosecution and defense lawyers, jail officials and the general public, this concern for victims was quite pronounced and a view was canvassed that unless justice to the victim is put as one of the focal points of criminal proceedings, the system is unlikely to restore the balance as a fair procedure in the pursuit of truth.⁷

The main purpose of this paper is to analyze the situations where the criminal courts can grant compensation to the victims of crime. There are two reasons for this. The first reason is the presence of many barriers in people's access to justice in India. These barriers include the lack of awareness of people about law in general and the right to get compensation through civil laws in particular, low economic capacity of people and problem of delay in civil litigation among others which prevent a victim or his dependants from resorting to civil court for compensation. The second reason is the opportunity available to criminal courts especially at the subordinate level to grant compensation to victims under ss. 357 and 357A of the Code of Criminal Procedure, 1973 [hereinafter referred to as Cr.P.C] which can minimize the need of a victim or his dependants to make claim in civil litigation. A major part of the paper focuses on the analysis of s. 357 Cr.P.C. and its different aspects as enunciated by the Supreme Court of India. The paper also analyses the impact of order of compensation on the sentence of imprisonment and highlights some critical issues related to sentencing practices of the courts in such situations.⁸

The paper in the initial part discusses the compensation framework under civil law by giving an overview of some of the statutes which make substantial provisions for compensation in situations where accident, disaster or actionable wrong causes disability or death. An analysis of such statutes also seemed imperative because of reference to the victim's right to claim compensation in Civil Court in s. 357 (1) (b), Cr.P.C. and to the Fatal Accidents Act, 1855 in s. 357 (1) (c), Cr.P.C.

affected persons. The apex court added that such liability is not subject to any of the exceptions which operate vis-a-vis the tortious principle of strict liability under the rule in *Rylands v. Fletcher* [(1868) LR 3 HL 330].

5 Directive principle contained in Art. 38(1) of the constitution of India makes it obligatory for the state to promote welfare of people by ensuring a just social order.

6 See supra n. 3.

7 Id. at 75.

8 The paper does not examine the compensation framework under public law for violation of fundamental rights which is developed by the Supreme Court of India in *Rudul Sah v. State of Bihar* [(1983) 4 SCC 141] and *Nilabati Behera v. State of Orissa* [(1993) 2 SCC 746].

LEGISLATIVE FRAMEWORK FOR COMPENSATION TO VICTIMS UNDER CIVIL LAWS

The Fatal Accidents Act, 1855 is the first legislation in the Indian statute book which accords legal right to the dependants⁹ of a person if his death is caused by wrongful act, neglect or default of another person under circumstances which amount to crime in law.¹⁰ In 2011, the Supreme Court in *Suba Singh v. Davinder Kaur*¹¹ highlighted the anachronistic nature of the Fatal Accidents Act, 1855 while upholding the award of compensation to victim's widow granted by the civil court and maintained by the High Court.¹² The apex court in this case referred *Charan Lai Sahu v. Union of India*¹³ where it had advocated amendments in the Fatal Accidents Act, 1855 or passing of new legislation with a focus on following aspects:

1. The payment of a fixed minimum compensation on a "no fault liability" basis (as under the Motor Vehicles Act), pending final adjudication of the claims by a prescribed forum;
2. The creation of a special forum with specific power to grant interim relief in appropriate cases;
3. The evolution of a procedure to be followed by such forum which will be conducive to the expeditious determination of claims and avoid the high degree of formalism that attaches to proceedings in regular courts; and
4. A provision requiring industries and concerns engaged in hazardous activities to take out compulsory insurance against third party risks.

The Supreme Court in *Suba Singh* case expressed regret on the fact that no action so far has been taken by the Indian legislature in this direction. Expressing faith in the Union Government it hoped that the Government would take note of the urgent need to bring a contemporaneous and comprehensive legislation on the subject. The apex court also gave direction that this judgment should be brought to the notice of the Attorney General and the Law Commission of India.

It must be noted here that some of the suggestions made in *Charan Lai Sahu* case have been realized by virtue of the Public Liability (Insurance) Act, 1991.¹⁴ This Act covers the situation such as the payment of a minimum compensation as interim relief to the victims of industrial disasters on a 'no fault liability' basis pending final adjudication of the claims and compulsory insurance by industries engaged in hazardous activities against third party risks. The apex court here could have referred to the IIIth Report of the Law Commission of India, 1985 as well which suggested following reforms in the Fatal Accidents Act, 1855 and practices of court in the adjudication of disputes:

9 The term 'dependant' includes wife, husband, parent and child of victim.

10 S. 1A of the Fatal Accidents Act, 1855.

11 (2011) 13 SCC 296.

12 The Fatal Accidents Act, 1855 is based on the Fatal Accidents Act, 1846 of England. There has been no attempt by the Indian legislature to amend this law to accommodate the changing circumstances. The United Kingdom has repealed Fatal Accidents Act, 1846 by Fatal Accidents Act, 1976. The scope of claim for damages for bereavement was also made part of the compensation through s. 1A of the Administration of Justice Act 1982. But no effort has been made in India to relate its Fatal Accidents Act, 1855 with times.

13 (1990) 1 SCC 613.

14 See *Infra* n. 35 to 41 for discussion on the Public Liability (Insurance) Act, 1991.

- a. The victim should get damages for material as well as intangible interests which will include moral comfort and companionship which a person derive from natural ties of relationship or close association¹⁵.
- b. The funeral and medical expenses incurred on the deceased victim to be included within s. 1A of the Act as a separate head of compensatory damages.¹⁶
- c. The courts should not assess the prospect of the remarriage of widow of victim while calculating damages as it could be a cumbersome task to the court but it must take into account the actual re-marriage of the widow.¹⁷

Some statutes in civil law make provisions for immediate relief and final compensation to the victims of accident and industrial disasters. Following is a brief discussion of such laws in chronological manner¹⁸:

The Workmen's Compensation Act, 1923 aims to provide protection to workmen¹⁹ through employer's liability from hardship arising from accidents during employment.²⁰ It also treats contracting of an occupational disease²¹ peculiar to an employment²² as injury by accident²³ and possibilities of compensation in such situations. The Act obliges the state governments to appoint a commissioner for workmen's compensation²⁴ and such commissioner will have all the powers of a civil court.²⁵ Any question relating to the liability of any person to pay-compensation (including any question as to whether a person injured is or is not a workman) or as to the amount of duration of compensation (including any question as to the nature or extent of disablement) shall, in default of agreement must be settled by such commissioner.²⁶ The Act also enables the state governments to oblige every person employing workmen or any specified class of such persons to submit a correct return in such form and to such authority as specified in official gazette through notification, specifying the number of injuries in respect of which compensation has been paid by the employer during the previous year and the amount of such compensation together with such other particulars as to the compensation as the state government may direct.²⁷

The Motor Vehicle Act, 1988 provides for payment of compensation to the victim in case of death or disablement due to accidents caused by motor vehicle. The victim/dependant receives default compensation of rupees 50000/- for death and rupees 25000/- for permanent disablement as immediate relief from the owner of the vehicle.²⁸ In addition to this relief, the

15 Law Commission of India, 111th Report on the Fatal Accidents Act, 1855 (1985) at Para 6.3.

16 Id. at Para 6.6.

17 Id. at Para 7.12.

18 The paper does not analyze the use of s. 357, Cr.P.C. by the courts in cases involving criminal negligence causing accidents and industrial disasters as the paper's primary focus is on the compensation to victims for disability or death due to volitional criminal offences.

19 The Workmen's Compensation Act, 1923. Schedule II. It provides an extensive list of persons who are included in the definition of workmen.

20 S. 3, The Workmen's Compensation Act, 1923.

21 Schedule III. The Workmen's Compensation Act, 1923.

22 S. 3 (2), The Workmen's Compensation Act, 1923.

23 Schedule I, The Workmen's Compensation Act, 1923 provides the list of the injuries which are deemed to be permanent total disablement, permanent partial disablement or having other minor effects. It also maps out the percentage of loss of earning capacity corresponding to such injuries.

24 S. 20, The Workmen's Compensation Act, 1923.

25 S. 23, The Workmen's Compensation Act, 1923.

26 S. 19 (1), The Workmen's Compensation Act, 1923.

27 S. 16, The Workmen's Compensation Act, 1923.

28 Motor Vehicle Act, 1988. S.140 (1) & (2).

victim can also claim compensation under any other provision of this Act or under any other law on the principle of fault.²⁹ The insurance of vehicle by the owner against third party risks is mandatory under this Act.

The Railways Act, 1989 makes it obligatory for the railway administration to compensate the passengers or railway employees on duty. The victim or his representative has to file an application for compensation³⁰ and can also apply for the interim relief from the railway administration.³¹ The railway administration after an enquiry can give the interim relief immediately pending determination of the actual amount of compensation by the claims tribunal payable under s. 124 of the Act.³² The victim's right to get compensation under s. 124 of the Act does not limit the right to recover compensation under either Workmen's Compensation Act, 1923³³ or compensation payable under any contract or scheme of compensation or under any policy of insurance.³⁴ However no person can claim compensation more than once in respect of the same accident.

The Public Liability (Insurance) Act, 1991 is a major initiative of the Indian legislature to include the people in the vicinity of hazardous industries in the compensation scheme for loss in person or property due to industrial accidents. It noted thus:

Very often, the majority of the people affected are from the economically weaker sections who suffer great hardships because of delayed relief and compensation. While workers and employees of hazardous installations are protected under separate laws, members of public are not assured of any relief except through long legal processes. Industrial units seldom have the willingness to readily compensate the victims of accidents and the only remedy now available for the victims is to go through prolonged litigation in a court of law. Some units may not have the financial resources to provide even minimum relief.³⁵

Thus it is an arrangement where the owner of the industry dealing in hazardous substance has to take insurance policy under public liability insurance³⁶ so that relief can be provided in case of death of any person (other than a workman) or damage to any property which occur from the industrial accident.³⁷ The claimant is not required to establish the fault of owner for claim of relief as liability of owner to give relief is based on the principle of no fault.³⁸ The claimant or his legal heir has to make an application for relief to the district collector within 5 years of the accident.³⁹ This relief or compensation is in addition to any other right to claim compensation under other laws.⁴⁰ The liability of the insurer to all the claimants in case of one accident is limited to rupees five Crores and in case of more than one accident the liability cannot exceed rupees fifteen Crores.⁴¹

29 S. 141, Motor Vehicle Act, 1988.

30 S. 125, Railways Act, 1989.

31 S. 126(1), Railways Act, 1989.

32 S. 126 (2), Railways Act, 1989.

33 S. 128 (1), Railways Act, 1989.

34 S. 128 (2), Railways Act, 1989.

35 State of Objects and Reasons of the Public Liability (Insurance) Act, 1991.

36 S. 4, Public Liability (Insurance) Act, 1991.

37 S.3 (1), Public Liability (Insurance) Act, 1991.

38 S. 3 (2), Public Liability (Insurance) Act, 1991.

39 S. 6, Public Liability (Insurance) Act, 1991.

40 S. 8, Public Liability (Insurance) Act, 1991.

41 S. 10, Public Liability (Insurance) Act, 1991.

The National Green Tribunal Act, 2010 [NGT]⁴² dealing with setting up of the adjudicatory machinery for disposal of the cases involving substantial questions relating to environment, provide for ordering relief and compensation to the victims of accident occurring due to any hazardous substance apart from pollution and other environmental damages. It can also order for the restitution of damaged property. The relief and compensation, restitution of property and restoration of environment shall be in addition to the relief given under the Public Liability Insurance Act, 1991.⁴³ The claimant under this Act is eligible for compensation for death, injury to any person (other than workmen) or damage to any property or environment resulting from an accident or adverse impact of an activity or operation or process, under any enactment specified in Schedule I of the Act and the tribunal can order to pay such relief or compensation to the person responsible for such event.⁴⁴ NGT though an appellate body, has original jurisdiction to decide certain categories of cases. The NGT has all the powers of a civil court and its award, order or decision is executable like a decree of civil court.⁴⁵

The above discussion suggests that after the Bhopal gas disaster the Indian legislature have framed some effective laws to deal with the liability of industries dealing with hazardous substances to pay compensation to victims of industrial accident. However low economic capacity and lack of awareness of the victims of industrial disaster prevents them in claiming compensation from industries.⁴⁶ This involves issues of access of such victims to justice and a much needed proactive role of Legal Services Authority in this regard.⁴⁷

There is also urgent requirement to amend or review some of the existing laws. For example, laws like the Public Liability (Insurance) Act, 1991 should be reviewed periodically to update the amount of immediate relief which victims can get in case of industrial accident. The Schedule of this Act mentions the amount of compensation for different kind of losses due to industrial accident. The maximum amount a claimant can get under this Act for any injury or disability including permanent disability is rupees 25000/- with reimbursement of medical expenses incurred up to rupees 12500/- in addition. These figures should be revised now as these were set in year 1991. This Act must be amended to include a clause for periodical revision of such amount. Similarly some of the above statutes such as Fatal Accidents Act, 1855 and the Workmen's Compensation Act, 1923 are pre-constitutional. These laws too should be comprehensively reviewed and amended accordingly to accommodate the changed circumstances.

42 NGT Act implied an automatic repeal of two previous laws i.e. the National Environment Tribunal Act 1995, and the National Environment Appellate Authority Act, 1997 and therefore has resulted in the closure of the National Environment Appellate Authority (NEAA) which was a quasi-judicial body empowered to hear appeals against the environmental approvals granted (or not) to projects. All the cases pending before the NEAA have been now transferred to NGT.

43 S. 15 (1) & (2), National Green Tribunal Act, 2010.

44 S. 17 (1), National Green Tribunal Act, 2010.

45 S. 25 (1), National Green Tribunal Act, 2010.

46 The enactment of the Bhopal Gas Leak Disaster (Processing of Claims) Act 1985 was an instance of the helplessness of poor victims of industrial disaster. Realizing that victims of Bhopal gas disaster could not fight for their rights, the government acted as *parens patriae* by enacting this special law to cover the claims of victims.

47 See "Access to Justice : Human Rights Abuses Involving Corporations - India", A project of the International Commission of Jurists, Geneva, 2011 for the analysis of major obstacles that victims experience in getting compensation from the corporation and holding them accountable for violation of their rights. See pages 55-58 specifically for discussion on expensive litigation and limited legal aid. Available at <http://www.icj.org/dwn/database/AccessToJustice-India-ElecDist-July2011.pdf> [Visited on August 4, 2012].

COMPENSATION TO VICTIMS OF CRIME: S. 357 AND 357A, CODE OF CRIMINAL PROCEDURE, 1973

S. 357, Cr.P.C. is a minimally used but it is an effective provision which can reduce the adverse impact of crime on victims. S. 357 (1) (b) & (c), Cr.P.C. enable courts to order compensation to the victim of crime from fine imposed on the convicted person. S. 357 (3), Cr.P.C. allows courts to order compensation even when fine does not form part of the sentence. Whereas s. 357 (1) (b) & (c), Cr.P.C. provide for apportioning compensation from fine imposed by the court to the victim who is eligible for compensation under a civil court or under Fatal Accidents Act, 1855 respectively, s. 357 (3), Cr.P.C. does not put such limitations in ordering compensation by the court. Thus s. 357, Cr.P.C. provides unbound discretion to judges to balance the right of victims for compensation and save them from resorting to the cumbersome process of civil court.⁴⁸ The scope of this provision in giving jurisdiction to court at subordinate level as well makes it a very important provision of law which can be used for giving relief to a large number of victims.

Although a provision with great potential for victims, s. 357, Cr.P.C. does not take into account many situations such as what would happen if the accused is economically incapable of paying the ordered compensation to the victim or if the amount awarded in compensation remained inadequate for proper rehabilitation of victim or dependants *or if the accused is not traced or identified or trial does not take place and victim needs interim relief immediately?⁴⁹

Some of the above-mentioned shortcomings have been resolved with the introduction of s. 357A⁵⁰ in Cr.P.C. Now even on the acquittal or discharge of the accused or if compensation under s. 357, Cr.P.C. seemed inadequate to the trial court, the required compensation can be granted by the court for the rehabilitation of the victim.⁵¹ The victim now can also apply for compensation to legal services authority even if the offender is not traced or identified and where no trial has been initiated.⁵² The legal services authority have to process the application of victim within two months⁵³ and decide the quantum of compensation after due enquiry as per the recommendation of the court.⁵⁴ The legal services authority can also order for free medical treatment or any other interim relief to the victim as per the recommendation of police station in-charge or a magistrate.⁵⁵ S. 357A (1), Cr.P.C. makes it mandatory for state government to frame a scheme in coordination with central government for providing funds for compensation to victims or his dependants.

48 The comments of the Joint Select Committee recommended amendment in s. 545 of the old Code of Criminal Procedure, 1898 which enabled courts to order the accused to pay compensation to the dependants of died victims who are entitled under the Fatal Accidents Act to recover damages from the persons sentenced, for the loss resulting to them from such death. The committee made it clear that 'this will result in settling the claim once for all by doing away with the need for a further claim to a Civil Court, and avoid needless worry and expense to both sides.' Mentioned in Sarwan Singh v. State of Punjab [(1978) 4 SCC 111] at Para 10. See *Infra* n. 56.

49 The Malimath Committee too expressed concerns about this. For instance the conditions such as compensation only on the conviction of the accused, suspension of the compensation till the limitation period for the appeal expires or if an appeal is filed, till the appeal is disposed of (s. 357(2) Cr.P.C.) only enhances the suffering of victim. See *supra* n. 6 at 81.

50 Inserted by Act 5 of 2009, s. 28 (w.e.f. 31-12-2009).

51 See s. 357A (3) Cr.P.C.

52 See s. 357A (4) Cr.P.C.

53 See s. 357A (5) Cr.P.C.

54 See s. 357A (2) Cr.P.C.

55 See s. 357A (6) Cr.P.C.

VARIOUS ASPECTS OF SECTION 357, Cr.P.C: CONTRIBUTION OF THE SUPREME COURT

Whereas s. 357, Cr.P.C. provides basic framework for compensation, the Supreme Court of India has applied and interpreted this provision in many cases and consequently it evolved a rational scheme for compensation to victims. The following discussion of these cases explains the different aspects of this provision.

Before ordering compensation the courts first of all should ascertain the capacity of the accused to pay compensation. In *Sarwan Singh v. State of Punjab*⁵⁶ the Supreme Court stressed on this aspect. In this case five persons, all relatives, caused death of another relative in a quarrel over irrigation in agricultural field. The trial court convicted and sentenced all the accused under s. 302/ 149 of the Indian Penal Code {hereinafter referred to as IPC} and this was confirmed by the High Court. The apex court converted the conviction to s. 304 (1)/149, IPC and sentenced them to five years imprisonment and imposed a fine of rupees 3,500/- each. The fine was ordered to be paid as compensation under s. 357, Cr.P.C. to the widow of the deceased victim. The Apex Court said that if it is found by the court that compensation should be paid, then the capacity of the accused to pay compensation has to be determined.⁵⁷ It further said that the purpose will not be served if the accused is not able to pay the fine or compensation as imposing a default sentence for non-payment of fine would not achieve the object. If the accused is in a position to pay the compensation to the injured or his dependants to which they are entitled to, there could be no reason for the court not directing such compensation.⁵⁸

In *Palaniappa Gounder v. State of Tamil Nadu*⁵⁹ the appellant was convicted and sentenced by the trial court under s. 302, IPC. On appeal, the High Court commuted death sentence to imprisonment of life. The victim's children filed an application before the High Court under s. 482, Cr.P.C. praying that the appellant should be ordered to pay them the compensation of rupees 40000/- for the death of their father. High Court did not invoke s. 482, Cr.P.C. as prayed for by the dependants of victim as there was an express provision i.e s. 357, Cr.P.C. which confers powers on the court to order compensation. The High Court dealt with the application as if it was made under s. 357, Cr.P.C. and this was affirmed by the Supreme Court. Thus the High Court while commuting death sentence, imposed a fine of rupees 20000/- on the appellant and directed that out of the fine, rupees 15000/- should be paid to the dependants of the deceased under s. 357(1) (c), Cr.P.C. On appeal the Supreme Court reduced the amount of fine to rupees 3000/- and ruled that the High Court computed the amount without adequate data or any basis. The court said that it must be seen that whether a heavy fine was needed to be imposed along with the sentence of death or life imprisonment and courts should see what was a proper or adequate fine to be imposed in the circumstances of the cases.⁶⁰ It further added that courts should ensure that fine must not be excessive, having regard to all the circumstances of the case, the motivation of the offence, the pecuniary gain likely to have been made by the offender by committing the offence and his means to pay the fine.⁶¹

56 (1978) 4 SCC 111.

57 Id. at Para 10.

58 Ibid.

59 (1977) 2 SCC 634.

60 Id. at Para 9.

61 Id. at Para 12.

The Supreme Court in Hari Singh v. Sukhbir Singh⁶² urged all courts to exercise their power under s. 357, Cr.P.C. liberally to safeguard the interests of victim. In this case the victim and his relatives were attacked by seven persons in the field and the victim received severe head injuries which impaired his speech permanently. The accused were convicted by the trial court under ss. 307, 323 and 325 of the IPC read with s. 149, IPC and sentenced to imprisonment for three to four years. On appeal the High Court acquitted two accused and quashed the conviction of the other five accused under s. 307/149, IPC but maintained their conviction under s. 325/149, IPC. Accused persons were granted probation and each was ordered to pay compensation of rupees 2500/- to victim. On appeal the Supreme Court did not disturb the decision of the High Court regarding conviction and sentence but ordered the accused persons to jointly pay a total compensation of rupees 50000/- to the victim under s. 357 (3), Cr.P.C. The Supreme Court stressed the importance of s. 357 (3), Cr.P.C. and recorded thus:

*It is an important provision but Courts have seldom invoked it. Perhaps due to ignorance of the object of it. It empowers the Court to award compensation to victims while passing judgment of conviction. In addition to conviction, the Court may order the accused to pay some amount by way of compensation to victim who has suffered by the action of accused. It may be noted that this power of Courts to award compensation is not ancillary to other sentences but it is in addition thereto. This power was intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well of reconciling the victim with the offender. It is, to some extent, a constructive approach to crimes. It is indeed a step forward in our criminal justice system. We, therefore, recommend to all Courts to exercise this power liberally so as to meet the ends of justice in a better way.*⁶³

The apex court also laid down some principles which courts should consider regarding assessment of amount of compensation and mode of its payment. It recorded thus:

*The payment by way of compensation must, however, be reasonable. What is reasonable, may depend upon the facts and circumstances of each case. The quantum of compensation may be determined by taking into account the nature of crime, the justness of claim by the victim and the ability of accused to pay. If there are more than one accused they may be asked to pay in equal terms unless their capacity to pay varies considerably. The payment may also vary depending upon the acts of each accused. Reasonable period for payment of compensation, if necessary by installments, may also be given. The Court may enforce the order by imposing sentence in default.*⁶⁴

In State of Punjab v. Gurmej Singh⁶⁵ the accused murdered three persons and injured others for issue related to money exchange among the brothers. The accused was convicted under s. 302, IPC and sentenced to death by the trial court with a fine of rupees 5000/- on each murder. The High Court commuted the death sentence into life imprisonment. The State of Punjab filed an appeal against the High Court's decision. It also raised the plea of compensation under s. 357 (3), Cr.P.C to the daughter of one of the deceased. The Apex Court upheld the High Court decision but rejected the argument of compensation and held that no compensation under

62 (1988) 4 SCC 551.

63 Id. at Para 10.

64 Id. at Para 11.

65 (2002) 6 SCC 663.

s. 357 (3), Cr.P.C. can be awarded when sentence of fine is ordered. The Apex Court however enhanced the amount of fine from rupees 5000/- to rupees 20000/- on each count to be paid to the daughter of the deceased.

In *Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd.*⁶⁶ after finding a company guilty under s. 138 of the Negotiable Instruments Act, 1881 [hereinafter referred to as NI Act] and its chairman under s. 138 read with s. 141 of the NI Act, the trial court fined company for rupees 25,000/- and ordered its chairman to pay rupees 15,00,000/- as compensation to the complainant under s. 357(3) of Cr.P.C. Accused filed the appeal but Appellate Court while admitting the appeal, directed them to deposit a sum of rupees five lakhs each within four weeks. A writ petition was filed by the appellant in the High Court of Bombay questioning the validity of said order of first appellate court on the ground that it violates s. 357 (2), Cr.P.C. The petition was dismissed by the High Court. Accused filed an appeal in the Supreme Court arguing that by virtue of s. 357(2), Cr.P.C. the amount of fine and compensation should be suspended. The defendant contended that s. 357 (2), Cr.P.C. has no application on compensation granted under s. 357 (3), Cr.P.C. as s. 357 (2), Cr.P.C. refers only to fine. The Supreme Court rejected this argument and ruled that as the compensation under s. 357 (3), Cr.P.C. can be directed to be recovered as fine, there is no reason to exclude it from the purview of s. 357 (2), Cr.P.C. The apex court also discussed the issue concerning the reasonableness of amount of compensation under s. 357 (3), Cr.P.C. Allowing the appeal the Apex Court held the amount of compensation as unreasonable. It observed that as there is no ceiling on the amount of compensation under s. 357 (3), Cr.P.C, the courts should grant it in a judicious manner. It said that ordinarily the court should grant lesser amount than what can be granted by a civil court. It records thus:

*If a fine is to be imposed under the Act, the amount of which in the opinion of the Parliament would be more than sufficient to compensate the complainant; can it be said, that an unreasonable amount should be directed to be paid by the Court while exercising its power under sub-section (3) of s. 357? The answer thereto must be rendered in the negative. Sub-section (5) of s. 357 also provides for some guidelines. Ordinarily, it should be lesser than the amount which can be granted by a Civil Court upon appreciation of the evidence brought before it for losses which might have reasonably been suffered by the plaintiff. Jurisdiction of the Civil Court, in this behalf, for realization of the amount in question must also be borne in mind. A criminal case is not a substitution for a civil suit, far less execution of a decree which may be passed.*⁶⁷

The Supreme Court here also questioned the practice of awarding compensation under s. 357 (3), Cr.P.C. in economic offences like those under the NI Act as it can be done through the substantive, provision of s. 138 of the NI Act read with s. 357 (1), Cr.P.C..⁶⁸ It however did not lay down any law in this respect as that was not the issue raised in the case. The practice of awarding compensation by the criminal court under s. 357(3), Cr.P.C. was brought under scrutiny in this case. The Apex Court clearly argues that criminal court is not a proper forum for ordering higher compensation under this provision as it does not get sufficient opportunity to appreciate evidence for reasonable assessment of damage for which a civil court is more suitable. The Apex Court here as a whole does not seem to be appreciative of awarding compensation through s. 357 (3) Cr.P.C. in economic offences like those under the NI Act and

⁶⁶ (2007) 6 SCC 528.

⁶⁷ Id. at Para 39.

⁶⁸ Id. at Para 50.

that could be one of the reasons that it reacted sharply against the award of an exorbitant amount of rupees fifteen lakhs as compensation by the trial court in this case.

In *K.A. Abbas H.S.A. v. Sabu Joseph*⁶⁹ dealing with the Conviction and order of compensation by the High Court of Kerala for offence under s. 138 of the NI Act, the Apex Court delved into the objective behind the compensation to victim under s. 357(3), Cr.P.C. and the issue that whether a default sentence can be imposed on default of payment of compensation. The court said thus:

*The whole purpose of the provision is to accommodate the interests of the victims in the criminal justice system. Sometimes the situation becomes such that no purpose is served by keeping a person behind bars. Instead directing the accused to pay an amount of compensation to the victim or affected party can ensure delivery of total justice. Therefore, this grant of compensation is sometimes in lieu of sending a person behind bars or in addition to a very light sentence of imprisonment. Hence on default of payment of this compensation, there must be a just recourse. Not imposing a sentence of imprisonment would mean allowing the accused to get away without paying the compensation and imposing another fine would be impractical as it would mean imposing a fine upon another fine and therefore would not ensure proper enforcement of the order of compensation. While passing an order under s. 357(3), it is imperative for the courts to look at the ability and the capacity of the accused to pay the same amount as has been laid down by the cases above, otherwise the very purpose of granting an order of compensation would stand defeated.*⁷⁰

The apex court made it clear that the mode of recovery of fine and compensation is on the same footing and a default sentence of imprisonment can be imposed for default in payment of compensation under s. 357(3), Cr.P.C.⁷¹

The discussion of the above cases clearly highlights the role of courts under s. 357, Cr.P.C. in reducing the sufferings of victims of crime. The above cases also enunciate some of the principles which courts should consider while interpreting s. 357, Cr.P.C. The above discussion makes it clear that the Supreme Court recommends an increasing and regular use of this provision by the courts.

IMPACT OF COMPENSATION ON OTHER SENTENCES

The impact of order of compensation on the sentence of imprisonment raises some key issues such as whether the order of compensation should have neutral effect on sentence of imprisonment or should it induce court for a lenient view towards an offender? The discussion of following case laws of the Supreme Court as well as of High Courts answers these issues to a certain extent.

In *Prabhu Prasad Sah v. State of Bihar*⁷², the appellant at 15 years of age had murdered the victim exceeding his right of private defense and was convicted by the trial court under s. 302, IPC and sentenced to life imprisonment. On appeal the High Court altered his conviction to s. 304, Part I, IPC and sentenced him for 10 years imprisonment. The Apex Court said that the requirement of social justice demand that a heavy fine should be imposed on the appellant in lieu of reduction of sentence so that the children of the victim may be compensated. After

69 (2010) 6 SCC 230.

70 Id. at Para 26.

71 Id. at Para 29.

72 (1976) 4 SCC 289.

reducing the sentence of imprisonment of accused from 10 years to 2 years under s. 304 Part I, IPC, the apex court imposed a fine of rupees 3000/- to be paid as compensation to the victim's dependants.

In *Nand Ballabh Pant v. State (Union Territory of Delhi)*⁷³ the Supreme Court reduced the sentence of imprisonment awarded to accused under s. 304A, IPC from two months to one month and enhanced the fine from rupees 500/- to rupees 1000/-. The court ordered that fine should be paid to wife of deceased as compensation.

The case *Guruswamy v. State of Tamil Nadu*⁷⁴ dealt with the murder of a father and his son by another son in a family quarrel over property. The trial court awarded death sentence to appellant and his appeal in the High Court was dismissed. The Supreme Court commuted the sentence of death penalty into life imprisonment and imposed a fine of rupees 10000/- which was ordered to be paid as compensation to deceased's widow and children.

In *Nehru Jain v. State NCT of Delhi*⁷⁵ the victim who was a member of a band party in a marriage procession was shot dead by the appellant. While the victim was playing base drum, the appellant was allegedly firing shots from his licensed revolver and one bullet hit the victim in his head and he died in hospital. Appellant during trial argued ignorance of the entire incidence of shooting and the key witnesses retracted from their statements recorded under s. 164, Cr.P.C. according to which the appellant was standing near the bridegroom's mount and firing from a revolver one of which bullets had hit the deceased. However on the basis of evidence of ballistic experts, recovery of revolver from the appellant's home and other circumstantial evidences, the trial court convicted the appellant under s. 302, IPC and sentenced him for life imprisonment. On appeal the High Court converted his conviction to s. 304 Part II, IPC and sentenced him for two years imprisonment. The High Court considered some factors during sentencing including the fact that the appellant was a family man barely 45 years old with a deaf and dumb daughter who suffers from multiple medical problems. It further considered that the appellant had no previous history of criminality and the offence did not arise from any motive against the deceased. Lastly the High Court noticed that the appellant had readily agreed to suitably compensate the aged parents of the deceased and deposited rupees 3,50,000/- in the court in the form of bank drafts drawn in the name of the deceased's parents. The court said that while loss of a member of the family cannot be compensated nor freedom can be bargained by an offender by paying compensation to the victim or his legal heirs, the readiness with which the appellant came forward and deposited a substantial amount towards compensation for payment to the deceased's parents is a significant circumstance that needs to be kept in mind.

The decision in *R. P. Tyagi v. State*⁷⁶ involved the death of the victim under police custody where the High Court of Delhi invoked remedy under s. 357, (3) Cr.P.C. as well as under public law to provide compensation to deceased's mother. The facts of the case are that on 16th August, 1987 a police constable was stabbed by the deceased Mahender and his accomplice Ram Kumar both of whom had criminal record. Information about the stabbing incident was received in the police station and a case under s. 307, IPC was registered against the two. The police thereafter launched a manhunt to trace the culprits but were unable to do so and enraged by the turn of events the police officers picked up the family members and neighbours of Mahender and

73 (1976) 4 SCC 512.

74 (1979) 3 SCC 797.

75 116 (2005) DLT 634.

76 153 (2008) DLT 693.

Ram Kumar and confined them in the police station where they were beaten and humiliated and were told that until and unless the absconding duo surrender they would not be released. The two persons appeared in the police station on 24th August, 1987 and were administered severe beating by the appellant and other police functionaries at his instance and on account of this, Mahender died in hospital the next day. After the intervention of the Lt. Governor the FIR was filed after the delay of five and half months under s. 304/34, IPC against several persons including the appellant. After investigation an 'untraced' report was filed in the Court of the Metropolitan Magistrate, who accepted the same. Father of deceased then filed a criminal complaint in the Magistrate's Court which ultimately led to a trial, conviction of appellant under s. 302/ 342/120-B of the IPC and sentence of death by the Court of Sessions in 2006.

On appeal the High Court converted the conviction of appellant into s. 304 Part II, IPC and sentenced him for eight years rigorous imprisonment. The High Court simultaneously imposed the fine of rupees two lakhs under s. 357, Cr.P.C. to be paid to deceased's mother and also ordered the state to pay her the similar amount for vicarious liability of police functionaries. The High Court also noted that almost all the prosecution witnesses became hostile. On appeal by the appellant the Supreme Court confirmed the conviction as recorded by the High Court but reduced the sentence from eight years to five years and increased the fine from rupees two lakhs to rupees five lakhs to be paid to deceased's mother.⁷⁷

The case *Roy Fernandes v. State of Goa*⁷⁸ dealt with the murder of a sixty years old man and injuries to two others over a property dispute. The appellant was leading the unlawful assembly which assaulted the victims. One of the members of the unlawful assembly i.e Anthony D'Souza stabbed the old man on the left thigh cutting blood artery resulting in his death. The trial court convicted all the five accused under ss. 143, 148, 323, 325 and 302 read with S. 149 of the IPC. On appeal the High Court upheld the conviction and sentence awarded to the appellant and Anthony D'Souza and acquitted other three accused. Anthony D'Souza preferred a special leave petition which was dismissed by the Supreme Court in 2011. Appellant Roy Fernandes too filed appeal in Apex Court challenging his conviction. The Supreme Court quashed the order of conviction of appellant under s. 302 read with s. 149 of the IPC but maintained his conviction under other sections. The appellant raised the plea of being a first offender, his middle age and expressed his willingness to pay the compensation. In these circumstances the Supreme Court reduced his sentence of imprisonment to the period already undergone i.e nearly three months of imprisonment and ordered compensation of rupees 450000/- to three victims.

The efforts of the courts in the abovementioned cases show their concern for the rehabilitation of victim or his dependants. The courts as shown above had also considerably reduced the sentence of imprisonment of accused in these cases considering it futile to send accused for longer imprisonment when he had the capacity to pay proper compensation. In some of the above cases the accused themselves offered to pay compensation to the victims which was duly accepted by the courts and their punishment was reduced. Such situation raises the issue that given the presence of certain mitigating factors in favour of accused, whether his capacity to pay compensation should be considered as an additional and substantial mitigating factor in reducing the punishment of imprisonment. If courts resort to lighter punishment of imprisonment in cases where a person has died and if the accused has capacity to pay compensation to pay will it not lead to a situation where wealthy offenders will buy their

77 (2009) 17 SCC 445.

78 (2012) 3 SCC 221.

freedom from courts by offering huge compensation to dependants of deceased. In giving primacy to the victim's interests whether courts can ignore the gravity of the offence and desist from awarding the proportional punishment to a rich offender. What would happen if the accused is unemployed or poor and therefore has no capacity to pay? His poverty may condemn him for a strict and longer imprisonment which can be averted if he is rich.

It seems that courts may not be able to give benefit of lighter imprisonment to the poor accused who has certain mitigating factors in his favour because of his incapacity to pay compensation. The only way out of this situation could be that courts should pay the full amount of compensation to the victim immediately out of the fund under s. 357A, Cr.P.C. and then it can recover the amount from offender subsequently in small installments extended over a long period.⁷⁹ This step will result in effective rehabilitation of the victim immediately in majority of cases. Through this method the courts can reduce the use of custodial sentences by ordering compensation along with lighter punishment provided there are some other substantial mitigating factors in favour of accused. Looking at the alarming levels of overcrowding in Indian prisons which hardly give any scope for rehabilitation of offenders, the minimal use of custodial imprisonment should be promoted and use of ss. 357 and 357A of the Cr.P.C. should be enhanced.

CONCLUSION

S. 357, Cr.P.C. is not routinely invoked by the courts. There can be many reasons for this which include lack of sensitivity of courts towards victim's interests and concern for their immediate rehabilitation, lack of awareness of judges especially at subordinate court level about role of courts vis-a-vis ss. 357 and 357A, Cr.P.C. and absence of sentencing guidelines addressing victimological considerations among others. The only way by which the courts can be made to consider ss. 357 and 357A, Cr.P.C. in all cases of death, injuries, loss or damage is to make it mandatory for courts to consider ordering compensation and citing reasons for not doing so in those cases.⁸⁰

The indifference of the state governments towards preparation of schemes for funds for compensation to the victims under s. 357A (1), Cr.P.C. serves as a deterrent to courts to invoke this beneficial provision.⁸¹ The state governments should take necessary steps in this direction and the National Legal Services Authority [NALSA] should monitor the progress made by the state governments in this regard.

The Fatal Accidents Act, 1855 is still trapped in colonial context and its amendment can go a long way in addressing the sufferings of victim's family. Reforms in this Act can enhance the scope of compensation in many ways and consequently expand the role of courts in awarding compensation through s. 357, Cr.P.C. The reforms suggested by the IIIth Report of the Law Commission of India, 1985 as discussed in previous section should be implemented by the legislature by amending the Fatal Accidents Act, 1855. It could be quite unrealistic to expect the dependant of each and every victim of accident, disaster, or crime to approach the court to seek private law remedy under civil jurisdiction as most of the dependants of the victim may

79 The case *Hari Singh v. Sukhbir Singh* also recommends recovery of compensation in installments as one of the method of payment of compensation. (Supra n. 62).

80 For instance in England, s. 130 (1) of the Powers of Criminal Courts (Sentencing) Act 2000 enable courts to require convicted persons to pay compensation for injury, loss or damage, funeral expenses or bereavement in respect of a death resulting from the offence. s. 130 (3) of this Act requires a court to give reasons on passing sentence, if it does not make a compensation order in a case where this s. empowers it to do so.

81 Dr. K.N. Chandrasekharan Pillai, "Ensuring Equality: Role of Legal Services Authorities", available at: <http://nja.nic.in/Articles%20-Legal%20Aid-%20Director.pdf> [Visited on July 20, 2012].

not be economically capable nor would they have awareness of such civil remedy under Fatal Accidents Act, 1855. Therefore proper awareness about this Act and other civil laws dealing with compensation should be created by the Legal Services Authorities at various levels and immediate relief should be granted through s. 357A, Cr.P.C..

The Indian legislature should pass an Act to safeguard the interests of the victims in a comprehensive manner. The Malimath Committee recommended the enactment of the bill for Victim compensation prepared by the Indian Society of Victimology in 1995.⁸² The Government must review and pass this bill without any delay.

□□□

82 Supra n. 6 at 82.

SCHEMES

Central Victim Compensation Fund Scheme (CVCF) Guidelines

**No. 24013/94/Misc./2014-CSR.III
Government of India/Bharat Sarkar
Ministry of Home Affairs**

*NDDC.II Building, Jai Singh Road
New Delhi*

Dated the 14th October, 2015

To

The Chief Secretaries
All State Governments/UT Administrations

Subject : Central Victim Compensation Fund Scheme (CVCF) Guidelines- Regarding

Sir/Madam,

This is to inform you that the Ministry of Home Affairs has decided to set up a Central Victim Compensation Fund (CVCF) with the following key objectives:-

- (i)* To support and supplement the existing Victim Compensation Schemes notified by States/UT Administrations.
 - (ii)* To reduce disparity in quantum of compensation amount notified by different States/UTs for victims of similar crimes.
 - (iii)* To encourage States/UTs to effectively implement the Victim Compensation Schemes (VCS) notified by them under the provisions of section 357A of Cr.P.C. and continue financial support to victims of various crimes especially sexual offences including rape, acid attacks, crime against children, human trafficking etc.
2. A copy of the Central Victim Compensation Fund Scheme's Guidelines is enclosed. You are requested to modify your State Victim Compensation Scheme (VCS) suitably. Implementation of State VCS may be speeded up, so that States can claim financial support from CVCF after closure of this financial year. A copy of the scheme is also available on the website-of this Ministry viz www.mha.nic.in.

Yours Faithfully,

Sd/-

(Kumar Alok)

Joint Secretary to the Govt. of India
Tel No. 23438100

Central Victim Compensation Fund (CVCF) Guidelines

1. Short Title and Commencement:

These will be called as the- Central Victim Compensation Fund (CVCF) Guidelines and will come into force with effect from 21st August 2015.

2. Objective of Setting up of the CVCF:

- (i) To support and supplement the existing Victim Compensation Schemes notified by States/UT Administrations.
- (ii) To reduce disparity in quantum of compensation amount notified by different States/ UTs for victims of similar crimes.
- (iii) To encourage States/UTs to effectively implement the Victim Compensation Schemes (VCS) notified by them under the provisions of section 357A of Cr.P.C. and continue financial support to victims of various crimes especially sexual offences including rape, acid attacks, crime against children, human trafficking etc,

3. Size of the CVCF:

The CVCF will be set up with an initial corpus of Rs.200.00 Crore to be sanctioned by the Ministry of Finance.

4. Source of Corpus Funds for CVCF:

Out of the “*Nirbhaya Fund*”, which is meant for tackling crime/violence against women, one-time Budgetary Grant of Rs. 200.00 crore as initial corpus fund for the CVCF has been sanctioned (*to be sanctioned*). The Corpus Fund shall also be supplemented with option of receiving contribution from Public.

5. Empowered Committee and Composition:

- (a) The CVCF shall be administered by an Empowered Committee chaired by the Additional Secretary (CS), MHA The Empowered Committee shall consist of the following as Members :
 - (i) Joint Secretary, Department of Expenditure, Ministry of Finance
 - (ii) Joint Secretary, Ministry of Women and Child Development
 - (iii) Joint Secretary, Ministry of Social Justice and Empowerment
 - (iv) Chief Controller of Accounts, Home
 - (v) Director (Finance), Ministry of Home Affairs
 - (vi) Joint Secretary (UT Division) MHA.
 - (vii) Joint Secretary (CS Division) of MHA, Convenor.
- (b) In case of any exigencies, the Member may depute an officer of suitable seniority to attend the Empowered Committee, subject to prior approval of the Chairman. There should be minimum quorum of 4 nominees including the Chairman to consider and approve the proposals. The Chairman will have the power to invite any additional person to attend the meeting.

6. Secretariat:

Joint Secretary (CS Division) MHA shall be designated as the Administrator of the Fund. The Empowered Committee shall be assisted by the CS Division of MHA.

7. Essential Requirements to access funds from CVCF

- a. The State/ UT must notify the Victim Compensation, Scheme as per provisions of Section 357A of CrPC
- b. The quantum of compensation notified should not be less than the amount mentioned in **Annexure I**.
- c. State/UT must first pay the compensation amount to the eligible victims of crime from its own Victim Compensation Fund and then seek reimbursement of funds from CVCF.
- d. Any expenditure incurred from the -State Victim Compensation Fund to assist the victims will be treated to be first spent from the non-budgetary resource available in the State Fund. Budgetary grant received from the state Government/UT Administration will be used only after consuming the non-budgetary resource.
- e. Details of every victim compensated must be maintained electronically in 'Victim Compensation Module' in Citizen portal of CCTNS project

8. Admissible Activities of CVCF:

- a) To obtain a Corpus of fund's in MHA.
- b) To supplement the, Corpus in MHA through contributions from Corporates and the Public.
- c) To supplement and support the Victim Compensation Schemes notified by the States/UT Administrations on a matching share basis (to the extent of actual expenditure made from the State/UT Administrations Budget component to the State Victim Compensation Fund in that particular year).

{Explanation: It is expected that the State Victim Compensation Fund will consist of fees, fines, compensation amount paid/recovered from the perpetrators of crime and also budgetary support from the State Government/ UT Administration. Support from CVCF to the State/ UT will be limited to the actual expenditure made from the State/UT Administration budget component of the State Victim Compensation Fund in the particular year and only if the victims of Crime are being compensated as per the objectives of the state/UT victim compensation scheme. In case State/UT Budget Component is not fully spent in a particular year but carried forward and spent in the subsequent year; the State / UT will be eligible for recurring matching share from CVCF for this component of fund also subject to meeting other eligibility requirement}

- d) To provide special financial assistance up to Rs. 5.00 lakhs to the victims of Acid attack to meet treatment expenses over and above the compensation paid by the respective States/UT Administrations. Using this provision, a cashless treatment mechanism for victims of Acid Attack will be formulated in consultation with the states/UTs.

9. Approval and Release of Funds:

- a) States/UTs will first implement the victim compensation schemes notified by them and first pay compensation to the, eligible victims following the procedure and timeframe provided in their respective schemes.
- b) The State Govts/UT Administrations shall submit proposals for seeking financial assistance from CVCF (preferably once a year after completion of the financial year) as per **Annexure- II** attached.
- c) The Empowered Committee shall normally meet once in every quarter, or sooner, if required, to assess and approve the proposals as received in **Annexure II**.
- d) UT Administrations shall route their proposals through UT Division, MHA.
- e) The Empowered Committee shall have the power and the Authority to approve/reject/return the proposals.
- f) In case a proposal is sanctioned, funds- Will be transferred electronically to the bank account of the State victim compensation fund as maintained either by the State Legal Services Authority (SLSA) or by the nodal department of the state Government
- g) Utilisation Certificate from the State Governments/UT Administrations shall be furnished as per provisions of GFR 19(A).

10. Bank Account and Receipt of Contributions from the Public:

- a) The Central Victim Compensation Fund (CVCF) will be created with an initial funding of Rs 200 crore to be provided by the Ministry of Finance through the Demand for Grants of the Ministry of Home Affairs. Further, funding would be done by the Ministry of Finance, if need arises
- b) Contributions from Corporates and Public shall be received through a single Ban* Account opened in the State Bank of India, Central Secretariat Branch, North Block, New Delhi, favouring "The Central Victim Compensation Fund (CVCF)". The Bank Account will be operated jointly by the Administrator of this Corpus Fund and the Chief Controller of Accounts, Ministry of Home Affairs.
- c) Donations into the Corpus Fund of CVCF could be received through online payments through Net Banking, or by Debit/Credit Cards or Cheque or Demand Draft. In such cases, the Donor shall receive an automated, digitalised signed receipt from the State Bank of India, Central Secretariat Branch, North Block, New Delhi.
- d) While efforts 'would be made to optimally utilise the funds available in the CVCF, any temporarily idle balance may be invested in fixed Deposits with the State Bank of India, with the prior approval of the Empowered Committee. Interest earned by the CVCF would be ploughed back and used for furthering its objectives.
 - a. To ensure financial accountability, internal Audit shall be carried out by the Chief Controller of Accounts, Ministry of Finance (Department of Economic Affairs) once in every six months. In addition, statutory Audit shall be carried out annually by an Independent Auditor from a Board of Auditors appointed

by the CAG. The reports and observations will be brought to the notice of the Central Government.

- b. The Chief Controller of Accounts, Ministry of Home Affairs, will maintain the accounts, including Receipts and Payments Accounts.

12. Information and Web Portal:

Information relating to all activities of the Corpus Fund along with the relevant FAQs will be uploaded on the Web site of the Ministry of Home Affairs and, also by the State/UT Governments, in their respective Web sites. The respective Ministry/State Governments will answer RTI or other queries related to the implementation and utilization of funds made available to them for the activities under this scheme.

13. Monitoring:

The CS Division of the Union Home Ministry administratively concerned with the Corpus Fund shall monitor the utilization of funds received by the State Govt/UT Administrations and shall provide a Quarterly Report to the Empowered Committee headed by the Additional Secretary (CS).

14. Amendment of Guidelines:

After assessing the experience of administering the CVCF, the Empowered Committee may recommend amendment(s) in the guidelines, as and when required subject to approval of the Union Home Minister.

Minimum Amount of Compensation

Sl. No.	Description of Injures / loss	Minimum Amount of Compensation
1	Acid attack	Rs. 3 lakhs
2	Rape	Rs. 3 lakhs
3	Physical abuse of minor	Rs. 2 lakhs
4	Rehabilitation of victim of Human Trafficking	Rs. 1 lakh
5	Sexual assault (Excluding rape)	Rs. 50000/-
6	Death	Rs. 2 lakhs
7	Permanent Disability (80% or more)	Rs. 2 lakhs
8	Partial Disability (40% to 80%)	Rs. 1 lakh
9	Burns affecting greater than 25% of the body (excluding Acid Attack cases)	Rs. 2 lakhs
10	Loss of foetus	Rs. 50,000/-
11	Loss of fertility	Rs. 1.5 lakhs
12	Women victims of cross border firing:	
	(a) Death or Permanent Disability (80% or more)	Rs. 2 lakhs
	(b) Partial Disability (40% to 80%)	Rs. 1 lakh

Note : If the victim is less than 14 years of age, the compensation shall be increased by 50% over the amount specified above.

ANNEXURE-II

{File Number}
Government of {State/UT}

Dated the

To,

The Joint Secretary
CS (Division) Ministry of Home Affairs
Government of India

Subject-Request for reimbursement of funds from Central Victim Compensation Fund to (Name of States/UT)

Sir

Kindly find enclosed herewith a proposal to seek financial assistance from the CVCF to the victim compensation fund of {name of State/ UT}. During the financial {year}, we have disbursed {amount} to {number of victims}. The details of amount claimed, amount paid etc is given in the table below;

Rs in Lakh)

	Financial Year	Formula	Amount
1	Opening balance in the State victim compensation fund (A)		
2	Amount received as fees/ fine (B)		
3	Amount received as compensation from perpetrators of crime in the year (C)		
4	Amount received from other sources (D)		
5	Amount carried forward from previous year as budgetary grant component from State/UT (E)		
co	Amount received as budgetary grant from State/UT (F)		
7	Total non budgetary resource in State/UT VCF (G)	=A+B+C+D-E	
8	Total Budgetary and Non budgetary resource in SVCF (H)	=E+F+G	
9	Amount paid as compensation to the victims out of SVCF (I)		
10	Amount claimed from the CVCF if (I-G)>0	=(I-G)* or (E+F)*,	
11	Amount claimed from the CVCF if (I-G)<0	0	
12	Closing balance in the State Victim Compensation Fund		

13	Total number of victims assisted		
----	----------------------------------	--	--

* Support restricted to (I-G) or (E+F) Whichever is lower

Details of victims assisted is given in the enclosed sheet. Accordingly, the Ministry of Home Affairs may kindly sanction Rs. {Amount in lakh} from CVCF to the State victim compensation fund of {name of State}. Utilisation certificate for the amount sanctioned in the previous year {name of Year} is enclosed.

Yours faithfully,

{HOME SECRETARY}
GOVERNMENT OF {NAME OF STATE/UT}

Proforma for Claiming of amount of compensation from Central Victim Compensation Fund								
	1	2	3	4	5	6	7	8
SI No.	Components of the Scheme	No. of Cases reported/ No of Victims	No of Cases charge sheeted	No of cases Con- victed	No. of victims compen- sated by State Gov- ern-ments / Courts / Judicial Agencies / Com- mi-ssions / Others	Amount recov- ered from perpe- trators of crime	Amount released as comp- en- sa- tion	Re- marks
1	Rape cases							
2	Other sexual offence cases							
3	Acid attacks							
4	Crime against children cases (under POCSO Act)							
5	Human Trafficking Cases							
6	Victims of Cross border firing							
	Total							

□□□

Jharkhand Victim Compensation Scheme, 2012

Government of Jharkhand Home Department

Notification

The 3rd August, 2012

No. 5 Misc. (01)-81/2010/3735:- In exercise of the powers conferred by section 357A of the Code of Criminal Procedure, 1973 (Act 2 of 1974), the Governor of Jharkhand hereby frames the following scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation, namely :-

Short title:-

1. This scheme may be called the Jharkhand Victim Compensation Scheme, 2012.

Definitions:-

2. In this scheme, unless the context otherwise requires:-
 - (a) "Act" means the Code of Criminal Procedure, 1973 (2 of 1974);
 - (b) "Schedule" means Schedule appended to this Scheme;
 - (c) "State" means State of Jharkhand;
 - (d) "Victim" means a person who himself has suffered loss or injury as a result of crime and require rehabilitation and includes dependent family members.
 - (e) "District Legal Services Authority" means a authority constituted under the Chairmanship of the Principal District and Session Judge of the District constituted under the Legal Services Authorities Act 1987.
 - (f) The "State committee" means a Committee constituted under the Chairmanship of the Director, Prosecution of the State to be notified by the State Government.

Victim Compensation Fund:-

3.
 - (1) There shall be constituted a fund namely Victim Compensation Fund from which amount of compensation under this scheme shall be paid to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.
 - (2) The State Government shall allot a separate budget for the purpose of the scheme every year.
 - (3) The Fund shall be operated by the Director, Prosecution, Government of Jharkhand.
 - (d) The fund at the district level shall be placed by the Director, Prosecution and to be operated by the respective District Magistrates.

Eligibility for compensation:-

4. A Victim shall be eligible for the grant of compensation if, -

- (a) the offender is not traced or identified, but the victim is identified, and where no trial takes place, such victim may also apply grant of compensation under sub section (4) of section 357-A of the Act;
- (b) the victim/claimant report the crime to the officer-in-charge of the police station within 48 hours of the occurrence : or any senior police officer or Executive Magistrate or Judicial Magistrate of the area provided that the District Legal Services Authority, if satisfied, for the reasons to be recorded in writing, may condone the delay in reporting; (c) the victim/claimant cooperate with the police and prosecution during the investigation and trial of the case.

Procedure for grant of compensation:-

5. (1) Whenever a recommendation is made by the Court or an application is made by any victim or his dependent under sub section (2) of section 357-A of the Act to the District Legal Services Authority, the District Legal Services Authority shall examine the case and verify the contents of the claim with regard to the loss or injury caused to victim and arising out of the reported criminal activity and may call for any other relevant information necessary in order to determine genuineness. After verifying the claim, the District Legal Services Authority shall after due enquiry award compensation within two months, in accordance with provisions of this Scheme.
- (2) Compensation under this Scheme shall be paid subject to the condition that if the Trial court while passing judgement at later date, orders the accused persons to pay any amount by way of compensation under sub-section (3) of section 357 of the Act, the victim/claimant shall remit an amount ordered equal to the amount of compensation, or the amount order to be paid under the said sub-section (3) of section 357 of the Act, which ever is less. An undertaking to this effect shall be given by the victim/claimant before the disbursal of the compensation amount.
- (3) The District Legal Services Authority shall decide the quantum of compensation to be awarded to the victim or his dependents on the basis of loss caused to the victim, medical expenses to be incurred on treatment, minimum sustenance amount required for rehabilitation including such incidental charges as funeral expenses etc. The compensation may vary from case to case depending on fact of each case.
- (4) The quantum of compensation to be awarded to the victim or his dependents shall not exceed the maximum limit as per schedule-I.
- (5) The amount of compensation decided under the scheme shall be disbursed to the victim or his dependents as the case may be, from the Fund.
- (6) Compensation received by the victim from the State in relation to the crime in question, namely, insurance, ex-gratia and/or payment received under any other Act or State-run scheme, shall be considered as part of the compensation amount under these rule and if the eligible compensation amount exceeds the payments received by the victim from collateral sources mentioned above, the balance amount shall be paid out of Fund.

- (7) The cases covered under Motor Vehicle Act, 1988(59 of 1988) wherein compensation is to be awarded by the Motor Accident Claims Tribunal, shall not be covered under the Scheme.
- (8) The District Legal Services Authority, to alleviate the suffering of the victim, may order for immediate first aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer-in-charge of the police station or Magistrate of the area concerned or any other interim relief as it may deem fit.

Order to be placed on record:-

6. Copy of the order of compensation passed under this Scheme shall be mandatorily placed on record of the trial Court to enable the court to pass order of compensation under sub-section(3) of section 357 of the Act.

Limitation:

7. No claim made by the victim or his dependents under sub-section (4) of section 357A of the Act shall be entertained after a period of six months of the crime:
- Provided that the District Legal Services Authority, if satisfied, for the reasons to be recorded in writing, may condone the delay in filing the claim.

Appeal:-

8. Any victim aggrieved of the denial of compensation by the District Legal Services Authority may file an appeal before the State Committee within a period of ninety days:
- Provided that the State Committee, if satisfied, for the reasons to be recorded in writing, may condone the delay in filing the appeal.

SCHEDULE-I

SI. No.	Particular of Loss or Injury	Maximum limit of compensation
1.	Loss of life	Rs. 2.00 lacs
2.	Loss of any limb of part of body resulting 80% or above handicap	Rs. 50,000/-
3.	Loss of any limb of part of body resulting 40% & below 80% handicap	Rs. 20,000/-
4.	Rape of Minor	Rs. 50,000/-
5.	Rape	Rs. 20,000/-
6.	Rehabilitation	Rs.20,000/-
7.	Loss of any limb or part of body resulting below 40% handicap	Rs. 10,000/-
8.	Loss of injury causing severe mental agony to women and child victims in case like Human trafficking	Rs. 10,000/-
9.	Simple Loss or injury to Child victim	Rs. 10,000/-



Jharkhand Acid Attack Victim Compensation Scheme, 2012

झारखण्ड सरकार

गृह विभाग

संकल्प

विषय :- एसिड हमलों (Acid Attack) के पीड़ितों को अनुग्रह-अनुदान स्वीकृत किये जाने के संबंध में।

राज्य सरकार द्वारा आपराधिक घटनाओं के पीड़ितों को पुनर्वास एवं अनुग्रह-अनुदान स्वीकृत किये जाने हेतु अधिसूचना संख्या-3735, दिनांक 03.08.2012 द्वारा Jharkhand Victim Scheme, 2012 गठित है।

2. माननीय सर्वोच्च न्यायालय नई दिल्ली द्वारा रीट पीटिशन (क्रिमिनल) संख्या-129/2008 लक्ष्मी बनाम यूनियन ऑफ इंडिया एवं अन्य से संबंधित मामलों में एसिड हमलों (Acid Attack) के पीड़ितों को मुआवजा भुगतान से संबंधित निर्देश है।
3. माननीय सर्वोच्च न्यायालय द्वारा रीट पीटिशन (क्रिमिनल) संख्या-129/2008 लक्ष्मी बनाम यूनियन ऑफ इंडिया एवं अन्य में पारित न्यायादेश के आलोक में अधिसूचना संख्या-3735, दिनांक 03.08.2012 द्वारा Jharkhand Victim Scheme 2012 में एसिड हमलों के पीड़ितों को मुआवजा भुगतान हेतु परिशिष्ट-II के रूप में निर्मांकित तथ्य जोड़ा जाता है :-

एसिड हमलों के पीड़ितों (Acid Attack Victim) के उचित देखभाल एवं पुनर्वास हेतु रू0 3,00,000/- (तीन लाख) रूपये मात्र का मुआवजा (Compensation) का भुगतान किया जायेगा। इसमें से रू0 1,00,000/- (एक लाख) रूपये का भुगतान पीड़ित को घटना घटित होने के 15 (पंद्रह) दिनों के अंदर किया जायेगा एवं शेष राशि रू0 2,00,000/- (दो लाख) रूपये मात्र का भुगतान आगामी (इसके बाद) दो माह के अंदर भुगान करना सुनिश्चित किया जायेगा।

आदेश :- आदेश दिया जाता है कि इस संकल्प को झारखण्ड गजट में प्रकाशित किया जाये।

झारखण्ड राज्यपाल के आदेश से

□□□

झारखण्ड पीड़ित कल्याण अधिकोष नियमावली, 2014

झारखण्ड सरकार
कारा निरीक्षणालय
गृह (कारा) विभाग

प्रेषक,

शैलेन्द्र भूषण, भा0प्र0से0
कारा महानिरीक्षक,
झारखण्ड, राँची।

सेवा में,

सभी काराधीक्षक, झारखण्ड।
सभी प्रधान प्रोवेशन पदाधिकारी/प्रोवेशन पदाधिकारी, झारखण्ड।

राँची, दिनांक-18 मार्च, 2015

विषय :- विभिन्न वादों के सजावर बंदी (Convict) से संबंधित पीड़ित एवं उनके आश्रित (Victims and his dependents) को चिह्नित (पहचान) करने के संबंध में।

प्रसंग :- माननीय सर्वोच्च न्यायालय, नई दिल्ली के वाद सं0 CRWJCN0.308/1986 दिनांक-24.09.1998 एवं झारखण्ड उच्च न्यायालय के वाद क्रिमिनल अपील (डी0बी0) सं0-173/2013 धनु राम सोरेन बनाम् झारखण्ड सरकार तथा क्रिमिनल अपील (D.B.) No. 173/2013 निर्मल भेगड़ा बनाम् झारखण्ड सरकार व अन्य।

महाशय,

उपर्युक्त विषयक प्रासंगिक वादों के संदर्भ में कहना है कि झारखण्ड पीड़ित कल्याण अधिकोष नियमावली-2014, (Jharkhand Victim Welfare Fund Rules, 2014) के अन्तर्गत Victim Welfare Fund से Victim को अनुदान दिया जाना है। समीक्षा के क्रम में यह बात सामने आती है कि कारा में बंदी को जब भेजा जाता है, तो बंदी के वारंट में वाद सं0 तथा बंदी के संबंध में विवरण रहता है। Victim के संबंध में कोई विवरण अंकित नहीं रहता है। अबतक यह प्रक्रिया अपनायी जा रही है कि Victim के पहचान के लिए काराधीक्षक के द्वारा पत्र संबंधित उपायुक्त/पुलिस अधीक्षक एवं प्रोवेशन पदाधिकारी को दिया जाता रहा है। कारण चाहे जो भी हो, Victim को पहचान करने की कार्रवाई में प्रगति शून्य है। अतः Victim के पहचान करने के लिए सभी प्रधान प्रोवेशन पदाधिकारी को निम्नांकित निर्देश दिया जाता है :-

1. काराधीक्षक किसी बंदी के Victim के पहचान करने के लिए सर्वप्रथम संबंधित सजावर बंदी से पीड़ित की जानकारी प्राप्त करेंगे। उक्त सूचना प्रोवेशन पदाधिकारी को भी देंगे।
2. काराधीक्षक से Victim के पहचान करने के लिए पत्र प्राप्त होने पर प्रोवेशन पदाधिकारी उक्त वाद के संबंध में विस्तृत जानकारी के लिए न्यायालय के अभिलेख अवलोकन हेतु लिखित अध्याचना

निबंधक व्यवहार न्यायालय/संबंधित न्यायालय को देंगे। उक्त अभिलेख न्यायालय से उपलब्ध होने पर सम्पूर्ण Case का चार्जशीट/डायरी आदि पढ़कर संबंधित घटना एवं Victim का नाम, पता प्राप्त करेंगे। साथ ही संदर्भित Judgement की प्रति भी प्राप्त करेंगे।

3. प्रत्येक Case के संबंध में लोक अभियोजक से भी सम्पर्क कर जानकारी प्राप्त करेंगे।
4. उपरोक्त विवरण के आधार पर जब Victim का नाम एवं पता ज्ञात हो जाय तो वे, संबंधित Victim से सम्पर्क करने के लिए उनके पते पर स्थल निरीक्षण करेंगे एवं आवश्यक जानकारी प्राप्त करेंगे।
5. यदि पीड़ित की मृत्यु हो चुकी है तो Victim Welfare Fund की राशि प्राप्त करने के लिए उनके निकटस्थ आश्रित को खोजने एवं पहचान करने की कोशिश करेंगे। तदनुसार अपना प्रतिवेदन देंगे। आवश्यकतानुसार पीड़ित व उनके आश्रित से आवेदन पत्र भी प्राप्त कर लेंगे।

उपरोक्त आधार पर जाँच करते हुए प्रोवेशन पदाधिकारी अपना प्रतिवेदन तैयार कर अपने मंतव्य के साथ काराधीक्षक को भेजेंगे। काराधीक्षक को यदि अन्य प्रतिवेदन भी प्राप्त हो तो उसकी तुलना कर पूर्ण तथ्यों एवं अपने मंतव्य के साथ अनुदान के प्रस्ताव को Victim Welfare Fund के वितरण के लिए गठित समिति के समक्ष प्रस्ताव रखेंगे। बैठक के निर्णय के अनुसार अनुदान वितरण संबंधी अग्रेतर कार्रवाई काराधीक्षक द्वारा की जायेगी।

प्रधान/प्रोवेशन पदाधिकारी काराधीक्षक से प्रस्ताव प्राप्त होने पर अपना प्रतिवेदन 15 दिनों के अन्दर काराधीक्षक को समर्पित करेंगे। यदि तीन सप्ताह के बाद भी प्रतिवेदन काराधीक्षकों को नहीं भेजते हैं तो यह कार्य के प्रति उनकी उदासीनता मानी जाएगी।

विश्वासभाजन
ह0
(शैलेन्द्र भूषण),
कारा महानिरीक्षक,
झारखण्ड, राँची।

झारखण्ड सरकार
गृह विभाग
अधिसूचना

राँची, दिनांक 13 फरवरी, 2014 ई०।

संख्या-11/बंदी विविध-01/2010-...../राज्य की काराओं में संसीमित बंदियों को उनके द्वारा किये गये कार्यों के बदले उनका पारिश्रमिक अकुशल, अर्द्धकुशल एवं कुशल श्रमिकों हेतु निर्धारित है। वर्तमान में यह दर क्रमशः रू० 14/-, रू० 28/- एवं रू० 46/- प्रति बंदी प्रतिदिन देय है।

बंदियों द्वारा किये गये अपराध से प्रभावित परिवार के पुनर्वास के लिए राज्य सरकार द्वारा यह निर्णय लिया गया है कि देय पारिश्रमिक की एक तिहाई राशि काटकर पीड़ित कल्याण अधिकोष (Victim Welfare Fund) के लिए रखा जायेगा तथा शेष दो तिहाई राशि ही बंदी को भुगतान किया जायेगा।

इस संदर्भ में पीड़ित कल्याण अधिकोष के संचालन एवं नियंत्रण के लिए झारखण्ड पीड़ित कल्याण अधिकोष नियमावली, 2014 (Jharkhand Victim Welfare Fund Rules, 2014) निम्नरूपेण गठित की जाती है :-

1. संक्षिप्त नाम एवं प्रारंभ :-

- (क) यह नियमावली झारखण्ड पीड़ित कल्याण अधिकोष नियमावली, 2014 कहलायेगी।
- (ख) इसका विस्तार सम्पूर्ण झारखण्ड राज्य होगा।
- (ग) यह राजपत्र में प्रकाशन की तिथि से प्रवृत्त होगी।

2. परिभाषाएँ :-

- (क) उपायुक्त-से अभिप्रेत है संबंधित जिला के उपायुक्त।
- (ख) पुलिस अधीक्षक-से अभिप्रेत है संबंधित जिला के पुलिस अधीक्षक।
- (ग) सचिव, जिला वैधिक सहायता प्राधिकार-से अभिप्रेत है संबंधित जिला के सचिव, जिला विधिक सहायता प्राधिकार।
- (घ) कारा अधीक्षक-से अभिप्रेत है संबंधित कारा के अधीक्षक जहाँ बंदी सजायाफ्ता के रूप में संसीमित है।
- (ङ) प्रधान प्रोबेशन पदाधिकारी-से अभिप्रेत है संबंधित जिला के प्रधान प्रोबेशन पदाधिकारी।
- (च) पीड़ित-से अभिप्रेत है किये गये जुर्म से प्रभावित व्यक्ति।
- (छ) मजदूरी-से अभिप्रेत है समजायाफ्ता बंदी द्वारा अर्जित मजदूरी।

(झ) पीड़ित कल्याण अधिकोष-से अभिप्रेत है सजायाफ्ता बंदी के मजदूरी से काटी गयी 1/3 राशि, जो पीड़ित को मुआवजा के रूप में भुगतेय होगी, जिसके लिए बंदी राज्य की काराओं में सजा काट रहा है।

3. अनुशंसा समिति:-

जिला स्तर पर पीड़ित या उसके उत्तराधिकारियों को पीड़ित कल्याण अधिकोष से मुआवजा भुगतान हेतु एक समिति का गठन होगा जिसमें निम्नांकित सदस्य होंगे :-

- | | | |
|---|---|----------------------|
| (i) उपायुक्त | - | अध्यक्ष |
| (ii) पुलिस अधीक्षक | - | सदस्य |
| (iii) सचिव, जिला वैधिक सहायता प्राधिकार | - | विशेष आमंत्रित सदस्य |
| (iv) संबंधित काराधीक्षक | - | सदस्य सचिव |
| (v) संबंधित प्रधान प्रोबेशन पदाधिकारी | - | सदस्य |

समिति की प्रत्येक त्रैमासिक बैठक होगी, जिसमें पीड़ित या उसके उत्तराधिकारी की पहचान पीड़ित कल्याण अधिकोष से मुआवजा भुगतान हेतु की जायेगी। यदि एक से अधिक पीड़ित या उनके उत्तराधिकारी हों तो ऐसी स्थिति में समिति मुआवजा के बराबर एवं समानुपातिक बंटवारे के संबंध में निर्णय लेगी।

4. आवेदन पत्र :-

पीड़ित या उसके उत्तराधिकारी द्वारा आवेदन पत्र संबंधित कारा अधीक्षक को निम्नांकित प्रपत्र में दिया जायेगा :-

प्रपत्र

- (1) आवेदक का नाम एवं पता -
- (2) पीड़ित/मृत व्यक्ति का नाम -
- (3) पीड़ित से आवेदक का संबंध -
- (4) उम्र -
- (5) सजायाफ्ता बंदी का नाम -
- (6) सजायाफ्ता बंदी के थाना केश संख्या एवं ट्रायल संख्या -
- (7) न्यायालय का नाम -
 - (i) जिसके द्वारा आदेश पारित है -
 - (ii) आदेश की तिथि -
 - (iii) आदेश का सारांश -
 - (iv) आदेश के विरुद्ध अपील की स्थिति -

(v) अपीलीय न्यायालय के आदेश का ब्यौरा -

आवेदक का हस्ताक्षर

5. प्रक्रिया :-

पीड़ित या उसके उत्तराधिकारी द्वारा आवेदन प्राप्त होने पर संबंधित कारा अधीक्षक आवेदन पत्र को संबंधित पुलिस अधीक्षक एवं प्रधान प्रोबेशन पदाधिकारी को पीड़ित या उसके उत्तराधिकारी के शीघ्र निर्धारण एवं पहचान के लिए अग्रसारित करेंगे।

पुलिस अधीक्षक एवं प्रधान प्रोबेशन पदाधिकारी का प्रतिवेदन प्राप्त कर कारा अधीक्षक, सचिव, जिला वैधिक सहायता प्राधिकार को समीक्षा के लिए प्रेषित करेंगे। उक्त प्रतिवेदन समीक्षोपरांत पीड़ित या उसके उत्तराधिकारी के मुआवजा के लिए अनुशंसा समिति के समक्ष प्रस्तुत की जायेगी। देय मुआवजा कारा महानिरीक्षक के अनुमोदन के पश्चात् ही भुगतेय होगा।

6. योग्यता निर्धारण :-

सभी कठिन कारावास या साधारण कारावास प्राप्त बंदी जो कारा में काम करेंगे उनको झारखण्ड सरकार द्वारा निर्धारित मजदूरी दी जायेगी। 2/3 मजदूरी बंदी को दी जायेगी एवं 1/3 बंदी का मजदूरी पीड़ित सहायता अधिकोष के लिए काटकर रख ली जायेगी, जो पीड़ित को मुआवजा के रूप में भुगतेय होगी। यदि पीड़ित या उसके उत्तराधिकारी, पीड़ित सहायता अधिकोष से निर्धारित राशि लेना नहीं चाहते हैं तो उन्हें यह बात लिखित रूप में समर्पित करना अनिवार्य होगा।

बंदी के कारा से मुक्ति के पश्चात् संदर्भित पीड़ित के निमित्त संचित राशि पीड़ित परिवार को देय होगी एवं उक्त राशि की प्राप्ति हेतु पीड़ित अपना दावा कर सकेगा।

7. अधिकोष का संचालन :-

कारा अधीक्षक के नियंत्रण में यह अधिकोष सभी जेलों में बनाया जायेगा और इसका संचालन संबंधित कारा अधीक्षक करेंगे। सभी जेलों में एक अलग खाता पीड़ित सहायता अधिकोष के नाम से राष्ट्रीयकृत बैंक में खोला जायेगा तथा इसका संचालन काराधीक्षक द्वारा किया जायेगा।

8. अनुपालन प्रतिवेदन :-

सभी कारा अधीक्षक, पीड़ित सहायता अधिकोष से भुगतान का त्रैमासिक प्रतिवेदन कारा महानिरीक्षक को समर्पित करेंगे। कारा महानिरीक्षक पूर्ण प्रतिवेदन गृह विभाग को अवलोकनार्थ प्रेषित करेंगे।

9. निरसन एवं व्यावृत्ति :-

राज्य सरकार इस नियमावली के किसी प्रावधान को संशोधित करने की शक्ति रखती है तथा किसी प्रकार की शंका के निवारण हेतु निर्देश/परिपत्र निर्गत कर सकती है और उसका विनिश्चय अंतिम होगा।

झारखण्ड राज्यपाल के आदेश से,

ह0

(एन० एन० पाण्डेय),
सरकार के प्रधान सचिव

□□□

Jharkhand Victim Welfare Fund Rules, 2014

Prisoners are paid remuneration for the work in jails at the rate of Rs. 14, 20 and 46 per day for unskilled labour, semi-skilled labour and skilled labour respectively.

Jharkhand Victim Welfare Fund Rules, 2014 provides for deduction of one-third remuneration of the prisoner for Victim Welfare Fund Recommendation Committee - A committee shall be constituted at district level for payment of compensation to the victim or his/her successors and the committee shall comprise of :-

- (i) Deputy Commissioner - Chairmen
- (ii) Superintendent of Police - Member
- (iii) Secretary, District Legal Services Authority - Spl. Invitee Member
- (iv) Concerned Jail Superintendent - Member-Secretary
- (v) Concerned Principal Probation Officer - Member

Sitting of the Recommendation Committee

The committee shall meet once in every three months for identification of victim or his/her successor for payment of compensation from the Victim Welfare Fund. Compensation amount shall be divided equally if there are more than one victim or successors.

Application for Compensation

Victim or his/her successor shall file application in following format before the concerned Jail Superintendent :

Format

- (1) Name and Address of Applicant :
- (2) Name of victim/deceased :
- (3) Relationship of applicant with victim :
- (4) Age :
- (5) Name of convicted prisoner :
- (6) Police Station Case No. and
Trial No. of convicted prisoner
- (7) Name of the court :
 - (i) Which has passed order :-
 - (ii) Date of order :-
 - (iii) Order in brief :-
 - (iv) Status of appeal against order :-
 - (v) Details of order of Appellate Court :-

Signature of Applicant

Process after submission of Application

- ❖ Soon after receiving application from victim or successor, the concerned Jail Superintendent shall forward the application to concerned Superintendent of Police and Principal Probation Officer for deciding and identifying the victim or his/her successor and after receiving report of Superintendent of Police and Principal Probation Officer, the Jail Superintendent shall forward the application along with report to the Secretary, District Legal Services Authority for review/scrutiny and after review/scrutiny the application shall be placed before the Recommendation Committee. The compensation shall be paid after approval of I.G., Prisons.

Important

The Victim or his/her successor shall be able to claim compensation from Victim Welfare Fund after release of prisoners from the jail.

Compliance Report

Account shall be opened in Nationalized Bank in every jail in the name of "Victim Welfare Fund" and it shall be conducted by concerned Jail Superintended. Every Jail Superintendent shall submit report in every three months to the I.G. Prisons who shall place the same before Home Department for perusal.

□□□

Jharkhand Naxal Victim Compensation Scheme

झारखण्ड सरकार गृह विभाग संकल्प

राँची, दिनांक फरवरी, 2006 ई01

विषय :- उग्रवाद हिंसा में मृत सामान्य नागरिकों के आश्रितों को अनुग्रह अनुदान राशि में बढ़ोत्तरी।

वर्तमान में राज्यान्तर्गत आतंकवादी, उग्रवादी हिंसा में मृत सामान्य नागरिकों के आश्रितों के अनुग्रह अनुदान के रूप में रूपये 50,000/- (पचास हजार रूपये) मात्र अनुग्रह अनुदान का भुगतान किया जाता है। सरकार द्वारा यह महसूस किया गया कि दिया जा रहा राशि पर्याप्त नहीं है। अतएव राज्यान्तर्गत उग्रवादी/आतंकवादी हिंसा में मृत सामान्य नागरिकों के आश्रितों को और अधिक आर्थिक सुरक्षा प्रदान करने के उद्देश्य से सरकार द्वारा निम्नांकित निर्णय लिए गए हैं :-

1. अनुग्रह अनुदान की राशि एवं राहत :-

- 1.1 आतंकवादी/उग्रवादी हिंसा में मृत सामान्य नागरिक के आश्रित को रूपये 1,00,000/- (एक लाख रूपये) की दर से अनुग्रह अनुदान।
- 1.2 स्थायी रूप से अपंग हुए प्रत्येक व्यक्ति को रूपये 50,000/- (पचास हजार रूपये) मात्र का अनुग्रह अनुदान।
- 1.3 गंभीर रूप से घायल व्यक्ति को रूपये 10,000/- (दस हजार रूपये) का अनुग्रह अनुदान तथा सरकारी एवं सरकार द्वारा अनुसूचित अस्पतालों में मुफ्त चिकित्सा की व्यवस्था।
2. उपर्युक्त वर्णित अनुग्रह अनुदान का लाभ किसी ऐसे व्यक्ति या उसके आश्रित को नहीं मिलेगा, जो उग्रवादी/आतंकवादी हो अथवा सूचीबद्ध अपराधी हो या किसी वैद्य पुलिस मुठभेड़ या पुलिस फायरिंग में मारा गया हो अथवा अपंग हुआ हो या घायल हुआ हो।
3. उपर्युक्त वर्णित अनुग्रह अनुदान स्वीकृत प्रतिवेदन करने की शक्ति गृह सचिव, झारखण्ड में निहित होगी। संबंधित उपायुक्त घटना से संबंधित प्रतिवेदन सभी वांछित कागजात यथा प्रथम इतल्ला प्रतिवेदन, पुलिस जाँच प्रतिवेदन, अन्त्यपरीक्षण प्रतिवेदन, मृतक/घायल का चरित्र प्रतिवेदन आदि के साथ यथाशीघ्र अनुग्रह अनुदान स्वीकृति हेतु गृह विभाग को उपलब्ध करायेंगे।
4. उपर्युक्त घटनाओं में अनुग्रह अनुदान एवं चिकित्सा पर हुए व्यय का वहन "2235-सामाजिक सुरक्षा और कल्याण-01-पुनर्वास-202-अन्य पुनर्वास योजनाएँ-0005-दंगा से प्रभावित व्यक्तियों को राहत" शीर्ष में उपबन्धित राशि से की जाएगी।
5. उपर्युक्त घटनाओं के संबंध में राहत उपलब्ध कराने के लिए नोडल विभाग, गृह विभाग होगा, जहाँ से नीति विषयक सभी दिशा-निर्देश निर्गत किए जायेंगे एवं राहत कार्यों को प्रदान करने की कार्यवाही का अनुश्रवण किया जाएगा।

झारखण्ड राज्यपाल के आदेश से,

ह0

(जे0 बी0 तुबिद)

सरकार के सचिव।



Ankush Shivaji Gaikwad Vs. State of Maharashtra

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 689 OF 2013
(Arising out of S.L.P. (Crl.) No.6287 of 2011)
May 3, 2013

Ankush Shivaji Gaikwad ...Appellant
Versus
State of Maharashtra ...Respondent

Coram:

(T. S Thakur and Gyan Sudha Misra, JJ.)

J U D G M E N T

T.S. THAKUR, J.

1. Leave granted.
2. This appeal arises out of a judgement and order dated 24th August, 2010 passed by the High Court of Judicature at Bombay, Aurangabad Bench, whereby Criminal Appeal No.359 of 2008 filed by the appellant and two others has been dismissed in so far as the appellant is concerned and allowed qua the remaining two, thereby upholding the appellant's conviction for the offence of murder punishable under Section 302 of the I.P.C and the sentence of imprisonment for life with a fine of Rs.2,000/- awarded to him. In default of payment of fine the appellant has been sentenced to undergo a further imprisonment for a period of three months.
3. The factual matrix in which the appellant came to be prosecuted and convicted has been set out in detail by the trial Court as also the High Court in the orders passed by them. We need not, therefore, recapitulate the same all over again except to the extent it is necessary to do so for the disposal of this appeal. Briefly stated, the incident that culminated in the death of deceased-Nilkanth Pawar and the consequent prosecution of the appellant and two others occurred at about 10.00 p.m. on 3rd February, 2006 while the deceased and his wife P.W.1-Mangalbai were guarding their Jaggery crop growing in their field. The prosecution story is that the appellant-Ankush Shivaji Gaikwad accompanied by Madhav Shivaji Gaikwad (accused No.2) and Shivaji Bhivaji Gaikwad (accused No.3) were walking past the field of the deceased when a dog owned by the deceased started barking at them. Angered by the barking of the animal, the appellant is alleged to have hit the dog with the iron pipe that he was carrying in his hand. The deceased objected to the appellant beating the dog, whereupon the appellant started abusing the former and told him to keep quiet or else he too would be beaten like a dog. The exchange of hot words, it appears, led to a scuffle between the deceased and the accused persons in the course whereof, while accused Nos.2 and 3 beat the deceased with fist and kicks, the appellant hit the deceased with the iron pipe on the head. On account of the injury inflicted upon him, the deceased fell to the ground whereupon all the three accused persons ran away from the spot. The incident was witnessed by the wife of the deceased, P.W.1- Mangalbai and by

P.W.5-Ramesh Ganpati Pawar who was also present in the field nearby at the time of the occurrence. The deceased was carried on a motorcycle to the hospital of one Dr. Chinchole at Omerga from where he was shifted to Solapur for further treatment. Two days after the occurrence when the condition of the deceased became precarious, P.W.1-Mangalbai filed a complaint at the Police Station, Omerga on 5th February, 2006 on the basis whereby Crime No.25 of 2006 under Sections 326, 504 and 323 read with Section 34 of the I.P.C was registered by the police. Investigation of the case was taken up by P.W.6-Police Sub Inspector Parihar who recorded the panchnama of the scene of the crime and arrested the accused persons. The deceased eventually succumbed to his injuries on 7th February, 2006 whereupon Section 302 read with Section 34 of the I.P.C. was added to the case.

4. Post-mortem examination of the deceased revealed a contusion behind his right ear, a contusion on the right arm and an abrasion on the right ankle joint. Internal examination, however, showed that the deceased had sustained an internal injury to the temporal and occipital region under the scalp and a fracture on the base of the skull. Blood clots were noted in the brain tissues and the base of the skull, besides internal bleeding. According to the doctor, the death was caused by the injury to the head. After completion of the investigation that included seizure of the alleged weapon used by the appellant, the police filed a chargesheet before the judicial Magistrate, who committed the appellant and co-accused to face trial for the offence of murder punishable under Section 302 read with Section 34 of the I.P.C. before the Sessions Court. Before the Sessions Court the appellant and his co-accused pleaded not guilty and claimed a trial.
5. The prosecution examined as many as six witnesses including P.W.1-Mangalbai, the widow of the deceased and P.W.5-Ramesh, both of whom were presented as eye witnesses to the occurrence. The remaining witnesses included P.W.3-Dr. Kamble and P.W.6-Police Sub-Inspector Parihar. Appraisal of the evidence adduced by the prosecution led the trial Court to hold the appellant and his co-accused guilty for the offence of murder and sentenced them to imprisonment for life besides a fine of Rs.2,000/- each and a default sentence of three months rigorous imprisonment.
6. The appellant and his co-accused preferred Criminal Appeal No.359 of 2008 before the High Court of Judicature at Bombay, Bench at Aurangabad. The High Court has by the judgment impugned in this appeal dismissed the appeal of the appellant before us but allowed the same in so far as the co-accused are concerned. The correctness of the said judgment and order is under challenge before us.
7. When the matter initially came up before us for hearing on 2nd September, 2011 we issued notice to the respondent-State confined to the question of the nature of offence only. We have accordingly heard learned counsel for the parties on the said question. The trial Court as also the High Court have, as noticed earlier, found the appellant guilty of murder. The question, however, is whether in the facts and circumstances of the case the appellant has been rightly convicted for the capital offence and if not whether the act attributed to him would constitute a lesser offence like culpable homicide not amounting to murder punishable under Section 304 Part I or II of the I.P.C.
8. On behalf of the appellant it was contended that the appellant's case fell within Exception 4 to Section 300 of the I.P.C. which reads as under:

“Exception 4.— Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.”

9. It was argued that the incident in question took place on a sudden fight without any premeditation and the act of the appellant hitting the deceased was committed in the heat of passion upon a sudden quarrel without the appellant having taken undue advantage or acting in a cruel or unusual manner. There is, in our opinion, considerable merit in that contention. We say so for three distinct reasons. Firstly, because even according to the prosecution version, there was no premeditation in the commission of the crime. There is not even a suggestion that the appellant had any enmity or motive to commit any offence against the deceased, leave alone a serious offence like murder. The prosecution case, as seen earlier, is that the deceased and his wife were guarding their Jaggery crop in their field at around 10 p.m. when their dog started barking at the appellant and his two companions who were walking along a mud path by the side of the field nearby. It was the barking of the dog that provoked the appellant to beat the dog with the rod that he was carrying apparently to protect himself against being harmed by any stray dog or animal. The deceased took objection to the beating of the dog without in the least anticipating that the same would escalate into a serious incident in the heat of the moment. The exchange of hot words in the quarrel over the barking of the dog led to a sudden fight which in turn culminated in the deceased being hit with the rod unfortunately on a vital part like the head. Secondly, because the weapon used was not lethal nor was the deceased given a second blow once he had collapsed to the ground. The prosecution case is that no sooner the deceased fell to the ground on account of the blow on the head, the appellant and his companions took to their heels – a circumstance that shows that the appellant had not acted in an unusual or cruel manner in the prevailing situation so as to deprive him of the benefit of Exception 4. Thirdly, because during the exchange of hot words between the deceased and the appellant all that was said by the appellant was that if the deceased did not keep quiet even he would be beaten like a dog. The use of these words also clearly shows that the intention of the appellant and his companions was at best to belabour him and not to kill him as such. The cumulative effect of all these circumstances, in our opinion, should entitle the appellant to the benefit of Exception 4 to Section 300 of the I.P.C.
10. Time now to refer to a few decisions of this Court where in similar circumstances this Court has held Exception 4 to Section 300 of the I.P.C. to be applicable and converted the offence against the appellant in those cases from murder to culpable homicide not amounting murder. In *Surinder Kumar v. Union Territory, Chandigarh* (1989) 2 SCC 217, this Court held that if on a sudden quarrel a person in the heat of the moment picks up a weapon which is handy and causes injuries out of which only one proves fatal, he would be entitled to the benefit of the Exception provided he has not acted cruelly. This Court held that the number of wounds caused during the occurrence in such a situation was not the decisive factor. What was important was that the occurrence had taken place on account of a sudden and unpremeditated fight and the offender must have acted in a fit of anger. Dealing with the provision of Exception 4 to Section 300 this Court observed:

“..... To invoke this exception four requirements must be satisfied, namely, (i) it was a sudden fight; (ii) there was no premeditation; (iii) the act was done in a heat of

passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner. The cause of the quarrel is not relevant nor is it relevant who offered the provocation or started the assault. The number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. Of course, the offender must not have taken any undue advantage or acted in a cruel manner. Where, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this exception provided he has not acted cruelly. (emphasis supplied)

11. We may also refer to the decision of this Court in Ghapoo Yadav and Ors. v. State of M.P. (2003) 3 SCC 528, where this Court held that in a heat of passion there must be no time for the passions to cool down and that the parties had in that case before the Court worked themselves into a fury on account of the verbal altercation in the beginning. Apart from the incident being the result of a sudden quarrel without premeditation, the law requires that the offender should not have taken undue advantage or acted in a cruel or unusual manner to be able to claim the benefit of Exception 4 to Section 300 IPC. Whether or not the fight was sudden, was declared by the Court to be decided in the facts and circumstances of each case. The following passage from the decision is apposite:

“...The help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight: (c) without the offender’s having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the ‘fight’ occurring in Exception 4 to Section 300. IPC is not defined in the IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4 It is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression ‘undue advantage’ as used in the provision means ‘unfair advantage.’”

xxx xxx xxx

...After the injuries were inflicted the injured has fallen down, but there is no material to show that thereafter any injury was inflicted when he was in a helpless condition. The assaults were made at random. Even the previous altercations were verbal and not physical. It is not the case of the prosecution that the accused appellants had come prepared and armed for attacking the deceased....This goes to show that in the heat of passion upon a sudden quarrel followed by a fight the accused persons had caused injuries on the deceased, but had not acted in cruel or unusual manner. That being so, Exception 4 to Section 300 IPC is clearly applicable... (emphasis supplied)

12. In ***Sukbhir Singh v. State of Haryana (2002) 3 SCC 327***, the appellant caused two Bhala blows on the vital part of the body of the deceased that was sufficient in the ordinary course of nature to cause death. The High Court held that the appellant had acted in a cruel and unusual manner. Reversing the view taken by the High Court this Court held that all fatal injuries resulting in death cannot be termed as cruel or unusual for the purposes of Exception 4 of Section 300 IPC. In cases where after the injured had fallen down, the appellant did not inflict any further injury when he was in a helpless position, it may indicate that he had not acted in a cruel or unusual manner. The Court observed:

“...All fatal injuries resulting in death cannot be termed as cruel or unusual for the purposes of not availing the benefit of Exception 4 of Section 300 IPC. After the injuries were inflicted and the injured had fallen down, the appellant is not shown to have inflicted any other injury upon his person when he was in a helpless position. It is proved that in the heat of passion upon a sudden quarrel followed by a fight, the accused who was armed with Bhala caused injuries at random and thus did not act in a cruel or unusual manner.” (emphasis supplied)

13. Reference may also be made to the decision in ***Mahesh v. State of MP (1996) 10 SCC 668***, where the appellant had assaulted the deceased in a sudden fight and after giving him one blow he had not caused any further injury to the deceased which fact situation was held by this Court to be sufficient to bring the case under Exception 4 to Section 300 of the IPC. This Court held:

“...Thus, placed as the appellant and the deceased were at the time of the occurrence, it appears to us that the appellant assaulted the deceased in that sudden fight and after giving him one blow took to his heels. He did not cause any other injury to the deceased and therefore it cannot be said that he acted in any cruel or unusual manner. Admittedly, he did not assault PW-2 or PW-6 who were also present also with the deceased and who had also requested the appellant not to allow his cattle to graze in the field of PW-1. This fortifies our belief that the assault on the deceased was made during a sudden quarrel without any premeditation. In this fact situation, we are of the opinion that Exception-4 to Section 300 IPC is clearly attracted to the case of the appellant and the offence of which the appellant can be said to be guilty would squarely fall under Section 304 (Part-I) IPC...”

(emphasis supplied)

14. To the same effect are the decisions of this Court in ***Vadla Chandraiah v. State of Andhra Pradesh (2006) 14 SCALE 108***, and ***Shankar Diwal Wadu v. State of Maharashtra (2007) 12 SCC 518***.

15. The next question then is whether the case falls under Section 304 Part I or Part II of the IPC. The distinction between the two parts of that provision was drawn by this Court in ***Alister Anthony Pareira v. State of Maharashtra (2012) 2 SCC 648***, in the following words:

“.... For punishment under Section 304 Part I, the prosecution must prove: the death of the person in question; that such death was caused by the act of the accused and that the accused intended by such act to cause death or cause such bodily injury as was likely to cause death. As regards punishment for Section 304 Part II, the

prosecution has to prove the death of the person in question; that such death was caused by the act of the accused and that he knew that such act of his was likely to cause death....”

16. Reference may also be made to the decision of this Court in *Singapagu Anjaiah v. State of Andhra Pradesh* (2010) 9 SCC 799 where this Court observed:

“16. In our opinion, as nobody can enter into the mind of the accused, its intention has to be gathered from the weapon used, the part of the body chosen for the assault and the nature of the injuries caused...” (emphasis supplied)

17. The decision of this Court in ***Basdev v. The State of PEPSU AIR 1956 SC 488***, drew a distinction between motive, intention and knowledge in the following words:

“...Of course, we have to distinguish between motive, intention and knowledge. Motive is something which prompts a man to form an intention and knowledge is an awareness of the consequences of the act. In many cases intention and knowledge merge into each other and mean the same thing more or less and intention can be presumed from knowledge. The demarcating line between knowledge and intention is no doubt thin but it is not difficult to perceive that they connote different things...”

18. This Court in the above decisions quoted the following passage from *Reg. v. Monkhouse* (1849) 4 Cox C. C. 55 where Coleridge J. speaking for the Court observed:

“The inquiry as to intent is far less simple than that as to whether an act has been committed, because you cannot look into a man’s mind to see what was passing there at any given time. What he intends can only be judged of by what he does or says, and if he says nothing, then his act alone must guide you to your decision. It is a general rule in criminal law, and one founded on common sense, that juries are to presume a man to do what is the natural consequence of his act. The consequence is sometimes so apparent as to leave no doubt of the intention. A man could not put a pistol which he knew to be loaded to another’s head, and fire it off, without intending to kill him; but even there the state of mind of the party is most material to be considered...” (emphasis supplied)

19. In ***Camilo Vaz v. State of Goa (2000) 9 SCC 1***, the accused had hit the deceased with a danda during a premeditated gang-fight, resulting in the death of the victim. Both the Trial Court and the Bombay High Court convicted the appellant under Section 302 I.P.C. This Court, however, converted the conviction to one under Section 304, Part II, I.P.C. and observed:

“...When a person hits another with a danda on a vital part of the body with such a force that the person hit meets his death, knowledge has to be imputed to the accused. In that situation case will fall in Part II of Section 304, IPC as in the present case...” (emphasis supplied)

20. In ***Jagrup Singh v. State of Haryana (1981) 3 SCC 616*** the accused had given a blow on the head of the deceased with the blunt side of a gandhala during a sudden fight causing a fracture to the skull and consequent death. This Court altered the conviction from Section 302 to Section 304, Part II IPC placing reliance upon the decision in *Chamru Budhwa v.*

State of Madhya Pradesh AIR 1954 SC 652 in which case also the exchange of abuses had led both the parties to use lathis in a fight that ensued in which the deceased was hit on the head by one of the lathi blows causing a fracture of the skull and his ultimate death. The accused was convicted for the offence of culpable homicide not amounting to murder under Section 304, Part II of the IPC.

21. Reference may also be made to the decisions of this Court in *Sarabjeet Singh and Ors. v. State of Uttar Pradesh* (1984) 1 SCC 673, *Mer Dhana Sida v. State of Gujarat* (1985) 1 SCC 200 and *Sukhmandar Singh v. State of Punjab* AIR 1995 SC 583 in which cases also the cause of death was a fracture to the skull in a sudden fight without premeditation. The Court altered the conviction from Section 302 IPC to Section 304, Part II of IPC. 22. Though the accused had inflicted only one injury upon the deceased, the fact that he had attempted to stab him a second time was taken as an indication of the accused having any intention to kill for the purpose of Section 304 Part I, IPC in *Kasam Abdulla Hafiz v. State of Maharashtra* (1998) 1 SCC 526, where this Court observed:

"...Looking at the nature of injuries sustained by the deceased and the circumstances as enumerated above the conclusion is irresistible that the death was caused by the acts of the accused done with the intention of causing such bodily injury as is likely to cause death and therefore the offence would squarely come within the 1st part of Section 304 I.P.C. The guilty intention of the accused to cause such bodily injury as is likely to cause death is apparent from the fact that he did attempt a second blow though did not succeed in the same and it somehow missed..."

(emphasis supplied)

23. We may lastly refer to the decision of this Court in ***Pulicherla Nagaraju @ Nagaraja Reddy v. State of Andhra Pradesh* (2006) 11 SCC 444** where this Court enumerated some of the circumstances relevant to finding out whether there was any intention to cause death on the part of the accused. This Court observed:

"...Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters - plucking of a fruit, straying of a cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no premeditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under Section 302, are not converted into offences punishable under Section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under Section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances : (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the

act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any pre-meditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention... (emphasis supplied)

24. Coming back to the case at hand, we are of the opinion that the nature of the simple injury inflicted by the accused, the part of the body on which it was inflicted, the weapon used to inflict the same and the circumstances in which the injury was inflicted do not suggest that the appellant had the intention to kill the deceased. All that can be said is that the appellant had the knowledge that the injury inflicted by him was likely to cause the death of the deceased. The case would, therefore, more appropriately fall under Section 304 Part II of the IPC.
25. The only other aspect that needs to be examined is whether any compensation be awarded against the appellant and in favour of the bereaved family under Section 357 of the Code of Criminal Procedure, 1973. This aspect arises very often and has been a subject matter of several pronouncements of this Court. The same may require some elaboration to place in bold relief certain aspects that need to be addressed by Courts but have despite the decisions of this Court remained obscure and neglected by the Courts at different levels in this country.
26. More than four decades back Krishna Iyer J. speaking for the Court in **Maru Ram & Ors. v. Union of India and Ors. (1981) 1 SCC 107**, in his inimitable style said that while social responsibility of the criminal to restore the loss or heal the injury is a part of the punitive exercise, the length of the prison term is no reparation to the crippled or bereaved but is futility compounded with cruelty. Victimology must find fulfilment said the Court, not through barbarity but by compulsory recoupment by the wrong doer of the damage inflicted not by giving more pain to the offender but by lessening the loss of the forlorn. In **Hari Singh v. Sukhbir Singh and Ors. (1988) 4 SCC 551**, this Court lamented the failure of the Courts in awarding compensation to the victims in terms of Section 357 (1) of the Cr.P.C. The Court recommended to all Courts to exercise the power available under Section 357 of the Cr.P.C. liberally so as to meet the ends of justice. The Court said:

"... Sub-section (1) of Section 357 provides power to award compensation to victims of the offence out of the sentence of fine imposed on accused... It is an important provision but Courts have seldom invoked it. Perhaps due to ignorance of the object of it. It empowers the Court to award compensation to victims while passing judgment of conviction. In addition to conviction, the Court may order the accused to pay some amount by way of compensation to victim who has suffered by the action of accused. It may be noted that this power of Courts to award compensation is not ancillary to other sentences but it is in addition thereto. This power was intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as

well of reconciling the victim with the offender. It is, to some extent, a constructive approach to crimes. It is indeed a step forward in our criminal justice system. We, therefore, recommend to all Courts to exercise this power liberally so as to meet the ends of justice in a better way. (emphasis supplied)

27. The amount of compensation, observed this Court, was to be determined by the Courts depending upon the facts and circumstances of each case, the nature of the crime, the justness of the claim and the capacity of the accused to pay.
28. In **Sarwan Singh and others v. State of Punjab (1978) 4 SCC 111**, **Balraj v. State of U.P. (1994) 4 SCC 29**, **Baldev Singh and Anr. v. State of Punjab (1995) 6 SCC 593**, **Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd. and Anr. (2007) 6 SCC 528**, this Court held that the power of the Courts to award compensation to victims under Section 357 is not ancillary to other sentences but in addition thereto and that imposition of fine and/or grant of compensation to a great extent must depend upon the relevant factors apart from such fine or compensation being just and reasonable. In **Dilip S. Dahanukar's** case (supra) this Court even favoured an inquiry albeit summary in nature to determine the paying capacity of the offender. The Court said:

"... The purpose of imposition of fine and/or grant of compensation to a great extent must be considered having the relevant factors therefore in mind. It may be compensating the person in one way or the other. The amount of compensation sought to be imposed, thus, must be reasonable and not arbitrary. Before issuing a direction to pay compensation, the capacity of accused to pay the same must be judged. A fortiori, an enquiry in this behalf even in a summary way may be necessary. Some reasons, which may not be very elaborate, may also have to be assigned; the purpose being that whereas the power to impose fine is limited and direction to pay compensation can be made for one or the other factors enumerated out of the same; but sub- Section (3) of Section 357 does not impose any such limitation and thus, power thereunder should be exercised only in appropriate cases. Such a jurisdiction cannot be exercised at the whims and caprice of a judge."

29. The long line of judicial pronouncements of this Court recognised in no uncertain terms a paradigm shift in the approach towards victims of crimes who were held entitled to reparation, restitution or compensation for loss or injury suffered by them. This shift from retribution to restitution began in the mid 1960s and gained momentum in the decades that followed. Interestingly the clock appears to have come full circle by the law makers and courts going back in a great measure to what was in ancient times common place. Harvard Law Review (1984) in an article on "*Victim Restitution in Criminal Law Process: A Procedural Analysis*" sums up the historical perspective of the concept of restitution in the following words:

"Far from being a novel approach to sentencing, restitution has been employed as a punitive sanction throughout history. In ancient societies, before the conceptual separation of civil and criminal law, it was standard practice to require an offender to reimburse the victim or his family for any loss caused by the offense. The primary purpose of such restitution was not to compensate the victim, but to protect the offender from violent retaliation by the victim or the community. It was a means by which the offender could buy back the peace he had broken. As

the state gradually established a monopoly over the institution of punishment, and a division between civil and criminal law emerged, the victim's right to compensation was incorporated into civil law."

30. With modern concepts creating a distinction between civil and criminal law in which civil law provides for remedies to award compensation for private wrongs and the criminal law takes care of punishing the wrong doer, the legal position that emerged till recent times was that criminal law need not concern itself with compensation to the victims since compensation was a civil remedy that fell within the domain of the civil Courts. This conventional position has in recent times undergone a notable sea change, as societies world over have increasingly felt that victims of the crimes were being neglected by the legislatures and the Courts alike. Legislations have, therefore, been introduced in many countries including Canada, Australia, England, New Zealand, Northern Ireland and in certain States in the USA providing for restitution/reparation by Courts administering criminal justice.
31. England was perhaps the first to adopt a separate statutory scheme for victim compensation by the State under the Criminal Injuries Compensation Scheme, 1964. Under the Criminal Justice Act, 1972 the idea of payment of compensation by the offender was introduced. The following extract from the Oxford Handbook of Criminology (1994 Edn., p.1237-1238), which has been quoted with approval in ***Delhi Domestic Working Women's Forum v. Union of India and Ors. (1995) 1 SCC 14*** is apposite:

"Compensation payable by the offender was introduced in the Criminal Justice Act 1972 which gave the Courts powers to make an ancillary order for compensation in addition to the main penalty in cases where 'injury', loss, or damage' had resulted. The Criminal Justice Act 1982 made it possible for the first time to make a compensation order as the sole penalty. It also required that in cases where fines and compensation orders were given together, the payment of compensation should take priority over the fine. These developments signified a major shift in penology thinking, reflecting the growing importance attached to restitution and reparation over the more narrowly retributive aims of conventional punishment. The Criminal Justice Act 1982 furthered this shift. It required courts to consider the making of a compensation order in every case of death, injury, loss or damage and, where such an order was not given, imposed a duty on the court to give reasons for not doing so. It also extended the range of injuries eligible for compensation. These new requirements mean that if the court fails to make a compensation order it must furnish reasons. Where reasons are given, the victim may apply for these to be subject to judicial review. The 1991 Criminal Justice Act contains a number of provisions which directly or indirectly encourage an even greater role for compensation..."

(emphasis supplied)

32. In the United States of America, the Victim and Witness Protection Act of 1982 authorizes a federal court to award restitution by means of monetary compensation as a part of a convict's sentence. Section 3553(a)(7) of Title 18 of the Act requires Courts to consider in every case "the need to provide restitution to any victims of the offense". Though it is not mandatory for the Court to award restitution in every case, the Act demands that the Court provide its reasons for denying the same. Section 3553(c) of Title 18 of the Act states as follows:

"If the court does not order restitution or orders only partial restitution, the court shall include in the statement the reason thereof." (emphasis supplied)

33. In order to be better equipped to decide the quantum of money to be paid in a restitution order, the United States federal law requires that details such as the financial history of the offender, the monetary loss caused to the victim by the offence, etc. be obtained during a Presentence Investigation, which is carried out over a period of 5 weeks after an offender is convicted.
34. Domestic/Municipal Legislation apart even the UN General Assembly recognized the right of victims of crimes to receive compensation by passing a resolution titled 'Declaration on Basic Principles of Justice for Victims and Abuse of Power, 1985'. The Resolution contained the following provisions on restitution and compensation:

"Restitution

8. *Offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights.*
9. *Governments should review their practices, regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions.*
10. *In cases of substantial harm to the environment, restitution, if ordered, should include, as far as possible, restoration of the environment, reconstruction of the infrastructure, replacement of community facilities and reimbursement of the expenses of relocation, whenever such harm results in the dislocation of a community.*
11. *Where public officials or other agents acting in an official or quasi-official capacity have violated national criminal laws, the victims should receive restitution from the State whose officials or agents were responsible for the harm inflicted. In cases where the Government under whose authority the victimizing act or omission occurred is no longer in existence, the State or Government successor in title should provide restitution to the victims.*

Compensation

12. *When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to:*
- (a) *Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;*
- (b) *The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization.*
13. *The establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including in those cases where*

the State of which the victim is a national is not in a position to compensate the victim for the harm.”

35. The UN General Assembly passed a resolution titled Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 2005 which deals with the rights of victims of international crimes and human rights violations. These Principles (while in their Draft form) were quoted with approval by this Court in State of Gujarat and Anr. v. Hon’ble High Court of Gujarat (1998) 7 SCC 392 in the following words:

“94. In recent years the right to reparation for victims of violation of human rights is gaining ground. United Nations Commission of Human Rights has circulated draft Basic Principles and Guidelines on the Right to Reparation for Victims of Violation of Human Rights, (see Annexure).”

36. Amongst others the following provisions on restitution and compensation have been made:

“12. Restitution shall be provided to reestablish the situation that existed prior to the violations of human rights or international humanitarian law. Restitution requires inter alia, restoration of liberty, family life citizenship, return to one’s place of residence, and restoration of employment or property.

13. Compensation shall be provided for any economically assessable damage resulting from violations of human rights or international humanitarian law, such as :

(a) Physical or mental harm, including pain, suffering and emotional distress;

(b) Lost opportunities including education;

(c) Material damages and loss of earnings, including loss of earning potential;

(d) Harm to reputation or dignity;

(e) Costs required for legal or expert assistance, medicines and medical services.”

37. Back home the Criminal Procedure Code of 1898 contained a provision for restitution in the form of Section 545, which stated in sub-clause 1(b) that the Court may direct “payment to any person of compensation for any loss or injury caused by the offence when substantial compensation is, in the opinion of the Court, recoverable by such person in a Civil Court”.³⁸ The Law Commission of India in its 41st Report submitted in 1969 discussed Section 545 of the Cr.P.C. of 1898 extensively and stated as follows:

“46.12. Under clause (b) of sub-sec. (1) of Section 545, the Court may direct “payment to any person of compensation for any loss or injury caused by the offence when substantial compensation is, in the opinion of the Court, recoverable by such person in a Civil Court.” The significance of the requirement that compensation should be recoverable in a Civil Court is that the act which constitutes the offence in question should also be a tort. The word “substantial” appears to have been

used to exclude cases where only nominal damages would be recoverable. We think it is hardly necessary to emphasise this aspect, since in any event it is purely within the discretion of the Criminal Courts to order or not to order payment of compensation, and in practice, they are not particularly liberal in utilizing this provision . We propose to omit the word "substantial" from the clause."
(emphasis supplied)

39. On the basis of the recommendations made by the Law Commission in the above report, the Government of India introduced the Criminal Procedure Code Bill, 1970, which aimed at revising Section 545 and introducing it in the form of Section 357 as it reads today. The Statement of Objects and Reasons underlying the Bill was as follows:

"Clause 365 [now s.357] which corresponds to section 545 makes provision for payment of compensation to victims of crimes. At present such compensation can be ordered only when the Court imposes a fine the amount is limited to the amount of fine. Under the new provision, compensation can be awarded irrespective of whether the offence is punishable with fine and fine is actually imposed, but such compensation can be ordered only if the accused is convicted. The compensation should be payable for any loss or injury whether physical or pecuniary and the Court shall have due regard to the nature of injury, the manner of inflicting the same, the capacity of the accused to pay and other relevant factors."
(emphasis supplied)

40. As regards the need for Courts to obtain comprehensive details regarding the background of the offender for the purpose of sentencing, the Law Commission in its 48th Report on 'Some Questions Under the Code of Criminal Procedure Bill, 1970' submitted in 1972 discussed the matter in some detail, stating as follows:

"45. It is now being increasingly recognised that a rational and consistent sentencing policy requires the removal of several deficiencies in the present system. One such deficiency is a lack of comprehensive information as to the characteristics and background of the offender.

The aims of sentencing--themselves obscure--become all the more so in the absence of comprehensive information on which the correctional process is to operate. The public as well as the courts themselves are in the dark about judicial approach in this regard.

We are of the view that the taking of evidence as to the circumstances relevant to sentencing should be encouraged, and both the prosecution and the accused should be allowed to cooperate in the process."
(emphasis supplied)

41. The Cr.P.C. of 1973 which incorporated the changes proposed in the said Bill of 1970 states in its Objects and Reasons that s.357 was "intended to provide relief to the proper sections of the community" and that the amended CrPC empowered the Court to order payment of compensation by the accused to the victims of crimes "to a larger extent" than was previously permissible under the Code. The changes brought about by the introduction of s.357 were as follows:

- (i) *The word "substantial" was excluded.*

- (ii) A new sub-section (3) was added which provides for payment of compensation even in cases where the fine does not form part of the sentence imposed.
- (iii) Sub-section (4) was introduced which states that an order awarding compensation may be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

- 42 The amendments to the Cr.P.C. brought about in 2008 focused heavily on the rights of victims in a criminal trial, particularly in trials relating to sexual offences. Though the 2008 amendments left Section 357 unchanged, they introduced Section 357A under which the Court is empowered to direct the State to pay compensation to the victim in such cases where “the compensation awarded under Section 357 is not adequate for such rehabilitation, or where the case ends in acquittal or discharge and the victim has to be rehabilitated.” Under this provision, even if the accused is not tried but the victim needs to be rehabilitated, the victim may request the State or District Legal Services Authority to award him/her compensation. This provision was introduced due to the recommendations made by the Law Commission of India in its 152nd and 154th Reports in 1994 and 1996 respectively.
43. The 154th Law Commission Report on the CrPC devoted an entire chapter to ‘Victimology’ in which the growing emphasis on victim’s rights in criminal trials was discussed extensively as under:

“1. Increasingly the attention of criminologists, penologists and reformers of criminal justice system has been directed to victimology, control of victimization and protection of victims of crimes. Crimes often entail substantive harms to people and not merely symbolic harm to the social order. Consequently the needs and rights of victims of crime should receive priority attention in the total response to crime. One recognized method of protection of victims is compensation to victims of crime. The needs of victims and their family are extensive and varied.

xx xx xx xx xx

9.1 *The principles of victimology has foundations in Indian constitutional jurisprudence. The provision on Fundamental Rights (Part III) and Directive Principles of State Policy (Part IV) form the bulwark for a new social order in which social and economic justice would blossom in the national life of the country (Article 38). Article 41 mandates inter alia that the State shall make effective provisions for “securing the right to public assistance in cases of disablement and in other cases of undeserved want.” So also Article 51-A makes it a fundamental duty of every Indian citizen, inter alia ‘to have compassion for living creatures’ and to ‘develop humanism’. If emphatically interpreted and imaginatively expanded these provisions can form the constitutional underpinnings for victimology.*

9.2 *However, in India the criminal law provides compensation to the victims and their dependants only in a limited manner. Section 357 of the Code of Criminal Procedure incorporates this concept to an extent and empowers the Criminal Courts to grant compensation to the victims.*

xx xx xx xx

11. *In India the principles of compensation to crime victims need to be reviewed and expanded to cover all cases. The compensation should not be limited only to fines, penalties and forfeitures realized. The State should accept the principle of providing assistance to victims out of its own funds...*
44. The question then is whether the plenitude of the power vested in the Courts under Section 357 & 357-A, notwithstanding, the Courts can simply ignore the provisions or neglect the exercise of a power that is primarily meant to be exercised for the benefit of the victims of crimes that are so often committed though less frequently punished by the Courts. In other words, whether Courts have a duty to advert to the question of awarding compensation to the victim and record reasons while granting or refusing relief to them?
45. The language of Section 357 Cr.P.C. at a glance may not suggest that any obligation is cast upon a Court to apply its mind to the question of compensation. Sub-section (1) of s.357 states that the Court “may” order for the whole or any part of a fine recovered to be applied towards compensation in the following cases:
- (i) *To any person who has suffered loss or injury by the offence, when in the opinion of the Court, such compensation would be recoverable by such person in a Civil Court.*
 - (ii) *To a person who is entitled to recover damages under the Fatal Accidents Act, when there is a conviction for causing death or abetment thereof.*
 - (iii) *To a bona fide purchaser of property, which has become the subject of theft, criminal misappropriation, criminal breach of trust, cheating, or receiving or retaining or disposing of stolen property, and which is ordered to be restored to its rightful owner.*
46. Sub-section (3) of Section 357 further empowers the Court by stating that it “may” award compensation even in such cases where the sentence imposed does not include a fine. The legal position is, however, well-established that cases may arise where a provision is mandatory despite the use of language that makes it discretionary. We may at the outset, refer to the oft quoted passage from **Julius v. Lord Bishop of Oxford (1880) 5 AC 214** where the Court summed up the legal position thus:
- “The words ‘it shall be lawful’ are not equivocal. They are plain and unambiguous. They are words merely making that legal and possible which there would otherwise be no right or authority to do. They confer a faculty or power and they do not of themselves do more than confer a faculty or power. But there may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed, to exercise that power when called upon to do so...”*
47. There is no gainsaying that Section 357 confers a power on the Court in so far as it makes it “legal and possible which there would otherwise be no right or authority to do” viz. to award compensation to victims in criminal cases. The question is whether despite the use of discretionary language such as the word “may”, there is “something” in the nature of the power to award compensation in criminal cases, in the object for which the power

is conferred or in the title of the persons for whose benefit it is to be exercised which, coupled with the power conferred under the provision, casts a duty on the Court to apply its mind to the question of exercise of this power in every criminal case.

48. In *Smt. Bachahan Devi and Anr. v. Nagar Nigam, Gorakhpur and Anr.* AIR 2008 SC 1282, this Court while dealing with the use of the word “may” summoned up the legal position thus:

“..It is well-settled that the use of word ‘may’ in a statutory provision would not by itself show that the provision is directory in nature. In some cases, the legislature may use the word ‘may’ as a matter of pure conventional courtesy and yet intend a mandatory force. In order, therefore, to interpret the legal import of the word ‘may’, the court has to consider various factors, namely, the object and the scheme of the Act, the context and the background against which the words have been used, the purpose and the advantages sought to be achieved by the use of this word, and the like. It is equally well-settled that where the word ‘may’ involves a discretion coupled with an obligation or where it confers a positive benefit to a general class of subjects in a utility Act, or where the court advances a remedy and suppresses the mischief, or where giving the words directory significance would defeat the very object of the Act, the word ‘may’ should be interpreted to convey a mandatory force...”
(emphasis supplied)

49. Similarly in *Dhampur Sugar Mills Ltd. v. State of U. P. and Ors.* (2007) 8 SCC 338, this Court held that the mere use of word ‘may’ or ‘shall’ was not conclusive. The question whether a particular provision of a statute is directory or mandatory, held the Court, can be resolved by ascertaining the intention of the Legislature and not by looking at the language in which the provision is clothed. And for finding out the legislative intent, the Court must examine the scheme of the Act, purpose and object underlying the provision, consequences likely to ensue or inconvenience likely to result if the provision is read one way or the other and many more considerations relevant thereto.
50. Applying the tests which emerge from the above cases to Section 357, it appears to us that the provision confers a power coupled with a duty on the Courts to apply its mind to the question of awarding compensation in every criminal case. We say so because in the background and context in which it was introduced, the power to award compensation was intended to reassure the victim that he or she is not forgotten in the criminal justice system. The victim would remain forgotten in the criminal justice system if despite Legislature having gone so far as to enact specific provisions relating to victim compensation, Courts choose to ignore the provisions altogether and do not even apply their mind to the question of compensation. It follows that unless Section 357 is read to confer an obligation on Courts to apply their mind to the question of compensation, it would defeat the very object behind the introduction of the provision.
51. If application of mind is not considered mandatory, the entire provision would be rendered a dead letter. It was held in *NEPC Micon Ltd. and Ors. v. Magma Leasing Ltd.* (1999) 4 SCC 253, albeit in the context of s.138 of the Negotiable Instruments Act that even in regard to a penal provision, any interpretation, which withdraws the life and blood of the provision and makes it ineffective and a dead letter should be avoided.

52. Similarly in ***Swantraj and Ors. v. State of Maharashtra (1975) 3 SCC 322***, this Court speaking through Justice Krishna Iyer held:

“1. Every legislation is a social document and judicial construction seeks to decipher the statutory mission, language permitting, taking the cue from the rule in Heydon’s case of suppressing the evil and advancing the remedy...”

53. The Court extracted with approval the following passage from Maxwell on Interpretation of Statutes:

“There is no doubt that ‘the office of the Judge is, to make such construction as will suppress the mischief, and advance the remedy, and to suppress all evasions for the continuance of the mischief.’ To carry out effectually the object of a statute, it must be so construed as to defeat all attempts to do, or avoid doing, in an indirect or circuitous manner that which it has prohibited or enjoined : quando aliquid prohibetur, prohibetur et omne per quod devenitur ad illud.”

54. This Court has through a line of cases beginning with Hari Singh’s case (supra) held that the power to award compensation under Section 357 is not ancillary to other sentences but in addition thereto. It would necessarily follow that the Court has a duty to apply its mind to the question of awarding compensation under Section 357 too. Reference may also be made to the decision of this Court in ***State of Andhra Pradesh v. Polamala Raju @ Rajarao (2000) 7 SCC 75*** where a three-judge bench of this Court set aside a judgment of the High Court for non-application of mind to the question of sentencing. In that case, this Court reprimanded the High Court for having reduced the sentence of the accused convicted under Section 376, IPC from 10 years imprisonment to 5 years without recording any reasons for the same. This Court said:

“...We are of the considered opinion that it is an obligation of the sentencing court to consider all relevant facts and circumstances bearing on the question of sentence and impose a sentence commensurate with the gravity of the offence...”

xx xx xx xx

...To say the least, the order contains no reasons, much less “special or adequate reasons”. The sentence has been reduced in a rather mechanical manner without proper application of mind...”

55. In ***State of Punjab v. Prem Sagar and Ors. (2008) 7 SCC 550*** this Court stressed the need for greater application of mind of the Courts in the field of sentencing. Setting aside the order granting probation by the High Court, the Court stated as follows:

“30 *....The High Court does not rest its decision on any legal principle. No sufficient or cogent reason has been arrived.*

31. *We have noticed the development of law in this behalf in other countries only to emphasise that the courts while imposing sentence must take into consideration the principles applicable thereto. It requires application of mind. The purpose of imposition of sentence must also be kept in mind...”*

56. Although speaking in the context of capital punishment, the following observation of this Court in ***Sangeet & Anr. v. State of Haryana (2013) 2 SCC 452*** could be said to apply to other sentences as well, particularly the award of compensation to the victim:

“In the sentencing process, both the crime and the criminal are equally important. We have unfortunately, not taken the sentencing process as seriously as it should be with the result that in capital offences, it has become judge-centric sentencing rather than principled sentencing.”

57. Section 357 Cr.P.C. confers a duty on the Court to apply its mind to the question of compensation in every criminal case. It necessarily follows that the Court must disclose that it has applied its mind to this question in every criminal case. In ***Maya Devi (Dead) through LRs and Ors. v. Raj Kumari Batra (Dead) through LRs and Ors. (2010) 9 SCC 486***, this Court held that disclosure of application of mind is best demonstrated by recording reasons in support of the order or conclusion. The Court observed:

“28. ...There is nothing like a power without any limits or constraints. That is so even when a court or other authority may be vested with wide discretionary power, for even discretion has to be exercised only along well-recognised and sound juristic principles with a view to promoting fairness, inducing transparency and aiding equity.

29 What then are the safeguards against an arbitrary exercise of power? The first and the most effective check against any such exercise is the well-recognised legal principle that orders can be made only after due application of mind. Application of mind brings reasonableness not only to the exercise of power but to the ultimate conclusion also. Application of mind in turn is best demonstrated by disclosure of mind. And disclosure is best demonstrated by recording reasons in support of the order or conclusion.

30. Recording of reasons in cases where the order is subject to further appeal is very important from yet another angle. An appellate court or the authority ought to have the advantage of examining the reasons that prevailed with the court or the authority making the order. Conversely, absence of reasons in an appealable order deprives the appellate court or the authority of that advantage and casts an onerous responsibility upon it to examine and determine the question on its own...” (emphasis supplied)

58. Similarly, in *State of Rajasthan v. Sohan Lal and Ors. (2004) 5 SCC 573*, this Court emphasised the need for reasons thus:

“...The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the court concerned had really applied its mind...”

59. In *Hindustan Times Ltd. v. Union of India (1998) 2 SCC 242* this Court stated that the absence of reasons in an order would burden the appellate court with the responsibility of going through the evidence or law for the first time. The Court observed :

“...In our view, the satisfaction which a reasoned Judgment gives to the losing party or his lawyer is the test of a good Judgment. Disposal of cases is no doubt important but quality of the judgment is equally, if not more, important. There is no point in shifting the burden to the higher Court either to support the judgment by reasons

or to consider the evidence or law for the first time to see if the judgment needs a reversal...”

- 60.** In *Director, Horticulture Punjab and Ors. v. Jagjivan Parshad* (2008) 5 SCC 539, this Court stated that the spelling out of reasons in an order is a requirement of natural justice:

“...Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the “inscrutable face of the sphinx”, it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking-out. The “inscrutable face of the sphinx” is ordinarily incongruous with a judicial or quasijudicial performance...”

- 61.** In *Maya Devi’s case* (supra), this Court summarised the existing case law on the need for reasoned orders as follows:

“22. *The juristic basis underlying the requirement that courts and indeed all such authorities, as exercise the power to determine the rights and obligations of individuals must give reasons in support of their orders has been examined in a long line of decisions rendered by this Court. In Hindustan Times Ltd. v. Union of India (1998) 2 SCC 242 the need to give reasons has been held to arise out of the need to minimise chances of arbitrariness and induce clarity.*

23. *In Arun v. Inspector General of Police (1986) 3 SCC 696 the recording of reasons in support of the order passed by the High Court has been held to inspire public confidence in administration of justice, and help the Apex Court to dispose of appeals filed against such orders. 24. In Union of India v. Jai Prakash Singh (2007) 10 SCC 712, reasons were held to be live links between the mind of the decision-maker and the controversy in question as also the decision or conclusion arrived at.*

25. *In Victoria Memorial Hall v. Howrah Ganatantrik Nagrik Samity (2010) 3 SCC 732, reasons were held to be the heartbeat of every conclusion, apart from being an essential feature of the principles of natural justice, that ensure transparency and fairness, in the decision-making process.*

26. *In Ram Phal v. State of Haryana (2009) 3 SCC 258, giving of satisfactory reasons was held to be a requirement arising out of an ordinary man’s sense of justice and a healthy discipline for all those who exercise power over others.*

27. *In Director, Horticulture, Punjab v. Jagjivan Parshad (2008) 5 SCC 539, the recording of reasons was held to be indicative of application of mind specially when the order is amenable to further avenues of challenge.”*

- 62.** To sum up: While the award or refusal of compensation in a particular case may be within the Court’s discretion, there exists a mandatory duty on the Court to apply its mind to the question in every criminal case. Application of mind to the question is best disclosed by recording reasons for awarding/refusing compensation. It is axiomatic that for any exercise

involving application of mind, the Court ought to have the necessary material which it would evaluate to arrive at a fair and reasonable conclusion. It is also beyond dispute that the occasion to consider the question of award of compensation would logically arise only after the court records a conviction of the accused. Capacity of the accused to pay which constitutes an important aspect of any order under Section 357 Cr.P.C. would involve a certain enquiry albeit summary unless of course the facts as emerging in the course of the trial are so clear that the court considers it unnecessary to do so. Such an enquiry can precede an order on sentence to enable the court to take a view, both on the question of sentence and compensation that it may in its wisdom decide to award to the victim or his/her family.

63. Coming then to the case at hand, we regret to say that the trial Court and the High Court appear to have remained oblivious to the provisions of Section 357 Cr.P.C. The judgments under appeal betray ignorance of the Courts below about the statutory provisions and the duty cast upon the Courts. Remand at this distant point of time does not appear to be a good option either. This may not be a happy situation but having regard to the facts and the circumstances of the case and the time lag since the offence was committed, we conclude this chapter in the hope that the courts remain careful in future.
64. In the result, we allow this appeal but only to the extent that instead of Section 302 IPC the appellant shall stand convicted for the offence of culpable homicide not amounting to murder punishable under Section 304 Part II IPC and sentenced to undergo rigorous imprisonment for a period of five years. The fine imposed upon the appellant and the default sentence awarded to him shall remain unaltered. The appeal is disposed of in the above terms in modification of the order passed by the Courts below. A copy of this order be forwarded to the Registrars General of the High Courts in the country for circulation among the Judges handling criminal trials and hearing appeals.

(T.S. Thakur)

(Gyan Sudha Misra)

New Delhi

May 3, 2013



Manohar Singh Vs. State of Rajasthan and Ors.

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 99 OF 2015
(ARISING OUT OF SLP (CRL) NO.1491 of 2012)

Manohar Singh ...Appellant
Versus
State of Rajasthan and Ors. ...Respondents

Coram:
(T. S. Thakur, Adarsh Kumar Goel, JJ)

JUDGMENT

ADARSH KUMAR GOEL, J.

1. Leave granted.
2. This appeal has been preferred against the judgment and order dated 23rd November, 2011 passed by the High Court of Rajasthan at Jaipur in Criminal Revision No.6 of 2009 by the complainant against the acquittal of the respondents of offences other than Section 323 of the Indian Penal Code ("IPC") and grant of probation to them setting aside the sentence of imprisonment imposed by the trial Court. As many as 13 accused were tried on the allegations that they assaulted and caused injuries to PW-5- Manohar Singh, appellant, Devi Singh PW-4, Maan Singh PW-11 and Karan Singh PW-1 on 29th October, 1980 at around 2 P.M. with a view to disturb the possession of the complainant party on the agricultural land in question.
3. The trial Court convicted the accused including respondent Nos.2 to 11 and one Mool Singh son of Jaswant Singh who died during pendency of the proceedings. Respondent Nos.2 to 11 were convicted and sentenced as follows :

Sl. No.	Name of the accused	Convicted and Sentence Imposed
1.	Ladu Singh	Under Section 323 IPC to undergo RI for three months; Under Section 326 IPC to undergo RI for four years and to pay fine of Rs.2,000/- and in default to undergo further imprisonment of three months; Under Section 324 IPC to undergo RI for one year and to pay fine of Rs.500/- and in default to undergo further imprisonment of one month.
2.	Mange Singh, Hanuman Singh son of Udai Singh, Sumer Singh and Tej Singh	Under Section 325 IPC to undergo RI for two years and to pay fine of Rs.1,000/- and in default to undergo further imprisonment of two months; Under Section 323 IPC to undergo RI for three months.

3.	Chotu Singh	Under Section 324 IPC to undergo RI for one year and to pay fine of Rs.500/- and in default to undergo further imprisonment of one month; Under Section 323, IPC to undergo RI for three months
4.	Mool Singh, Anand Singh, Sohan Singh, Hanuman Singh S/o Jaswant Singh and Bhanwar Singh	Under Section 323, IPC, to undergo RI for three month

4. On appeal, the Court of Sessions set aside the conviction for offences other than the one under Section 323 IPC but maintained the conviction under Section 323 IPC. The sentence of imprisonment was also set aside and the accused were granted probation subject to fine of Rs.5,000/- which was to be paid to the victim.
5. The injured PWs, namely, Karan Singh, Devi Singh and Maan Singh entered into the compromise and compounded the offence qua them but the appellant filed a revision in the High Court which was dismissed.
6. We have heard learned counsel for the parties.
7. Learned counsel for the appellant submitted that the Court of Sessions erred in setting aside the conviction for offences other than Section 323 and also erred in granting benefit of probation. The fine imposed was not adequate and having regard to number of injuries and their nature, adequate compensation ought to have been granted. The appellant received as many as 10 injuries including an incised wound in the parietal region by sharp edged weapon, a muscle deep injury on the front of left leg and a bone deep injury just above the front of left leg. Even if technically, the injury could be held to be simple instead of grievous, the sentence should have been adequate and in any case, due compensation ought to have been granted. Thus, the High Court erred in dismissing the revision petition.
8. Learned counsel for the accused pointed out that the respondent Devi Singh has died during pendency of the proceedings in this Court. Interference by this Court was not called for at this stage when 35 years have passed after the occurrence. In any case, it may not be appropriate to give any sentence of imprisonment to any of the accused and at best compensation may be directed to be paid by the accused or the State to the appellant.
9. After giving due consideration to the rival submissions, we are of the view that while it may not be appropriate to impose the sentence of imprisonment at this stage, having regard to the nature and extent of injuries, the appellant-complainant deserves to be duly compensated.
10. We find that the Court of Sessions and the High Court have not fully focused on the need to compensate the victim which can now be taken to be integral to just sentencing. Order of sentence in a criminal case needs due application of mind. The Court has to give attention not only to the nature of crime, prescribed sentence, mitigating and aggravating circumstances to strike just balance in needs of society and fairness to the accused, but also to keep in mind the need to give justice to the victim of crime. In spite of legislative changes and decisions of this Court, this aspect at times escapes attention. Rehabilitating

victim is as important as punishing the accused. Victim's plight cannot be ignored even when a crime goes unpunished for want of adequate evidence.

11. In the present case, following injuries were found on the appellant by Dr. A.P. Modi, PW-2:-

- “1. Bruise 6 cm x 4 cm down of right forearms.
2. Bruise 8 cm x 2 cm front of right arms.
3. Bruise 8 cm x 2 cm front of right arms.
4. Bruise 10 cm x 2 cm right supra scapular region.
5. Swelling of right shoulder with tenderness.
6. Bruise 15 cm x 2 cm on the middle of the back.
7. Abbrasion 1 cm x 1 cm left forearms.
8. Incised boon 2.5 x 0.5 x muscle deep fost of left leg.
9. Lancirated boon 3 x 1 cm x bone deep above injury no.8.
10. Incised boon 8 cm x 0.5 x bone deep on right parital region.”

Just compensation to the victim has to be fixed having regard to the medical and other expenses, pain and suffering, loss of earning and other relevant factors. While punishment to the accused is one aspect, determination of just compensation to the victim is the other. At times, evidence is not available in this regard. Some guess work in such a situation is inevitable. Compensation is payable under Section 357 and 357-A. While under section 357, financial capacity of the accused has to be kept in mind, Section 357-A under which compensation comes out of State funds, has to be invoked to make up the requirement of just compensation.

12. We may refer to some recent decisions on the subject. In **State of Gujarat and anr. vs. Hon'ble High Court of Gujarat**¹, it was observed:

“46. One area which is totally overlooked in the above practice is the plight of the victims. It is a recent trend in the sentencing policy to listen to the wailings of the victims. Criminal Appeal No..... of 2015 @SLP (Crl.) No.1491 of 2012 Rehabilitation of the prisoner need not be by closing the eyes towards the suffering victims of the offence. A glimpse at the field of victimology reveals two types of victims. The first type consists of direct victims, i.e., those who are alive and suffering on account of the harm inflicted by the prisoner while committing the crime. The second type comprises of indirect victims who are dependants of the direct victims of crimes who undergo sufferings due to deprivation of their breadwinner.

94. In recent years, the right to reparation for victims of violation of human rights is gaining ground. The United Nations Commission of Human Rights has circulated draft Basic Principles and Guidelines on the Right to Reparation for Victims of Violation of Human Rights. (see annexure)”

13. In **Ankush Shivaji Gaikwad vs. State of Maharashtra**², it was observed:

1 1 (1998) 7 SCC 392

2 2 (2013) 6 SCC 770

- “30.** *In Hari Singh v. Sukhbir Singh [(1988) 4 SCC 551 : 1998 SCC (Cri) 984] this Court lamented the failure of the courts in awarding compensation to the victims in terms of Section 357(1) CrPC. The Court recommended to all courts to exercise the power available under Section 357 CrPC liberally so as to meet the ends of justice. The Court said: (SCC pp. 557-58, para 10) “10. ... Sub-section (1) of Section 357 provides power to award compensation to victims of the offence out of the sentence of fine imposed on accused. ... It is an important provision but courts have seldom invoked it. Perhaps due to ignorance of the object of it. It empowers the court to award compensation to victims while passing judgment of conviction . In addition to conviction, the court may order the accused to pay some amount by way of compensation to victim who has suffered by the action of accused. It may be noted that this power of courts to award compensation is not ancillary to other sentences but it is in addition thereto. This power was intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well of reconciling the victim with the offender. It is, to some extent, a constructive approach to crimes. It is indeed a step forward in our criminal justice system. We, therefore, recommend to all courts to exercise this power liberally so as to meet the ends of justice in a better way.”* (emphasis supplied)
- 31.** *The amount of compensation, observed this Court, was to be determined by the courts depending upon the facts and circumstances of each case, the nature of the crime, the justness of the claim and the capacity of the accused to pay.*
- 32.** *In Sarwan Singh v. State of Punjab [(1978) 4 SCC 111 : 1978 SCC (Cri) 549], Balraj v. State of U.P [(1994) 4 SCC 29 : 1994 SCC (Cri) 823], Baldev Singh v. State of Punjab [(1995) 6 SCC 593 : 1995 SCC (Cri) 1132], Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd. [(2007) 6 SCC 528 : (2007) 3 SCC (Cri) 209] this Court held that the power of the courts to award compensation to victims under Section 357 is not ancillary to other sentences but in addition thereto and that imposition of fine and/or grant of compensation to a great extent must depend upon the relevant factors apart from such fine or compensation being just and reasonable. In Dilip S. Dahanukar case this Court even favoured an inquiry albeit summary in nature to determine the paying capacity of the offender. The Court said: (SCC p. 545, para 38)*
- “38.** *The purpose of imposition of fine and/or grant of compensation to a great extent must be considered having the relevant factors therefor in mind. It may be compensating the person in one way or the other. The amount of compensation sought to be imposed, thus, must be reasonable and not arbitrary. Before issuing a direction to pay compensation, the capacity of the accused to pay the same must be judged. A fortiori, an enquiry in this behalf even in a summary way, may be necessary. Some reasons, which may not be very elaborate, may also have to be assigned; the purpose being that whereas the power to impose fine is limited and direction to pay compensation can be made for one or the other factors enumerated out of the same; but sub-section (3) of Section 357 does not impose any such limitation and thus, power thereunder should be exercised only in appropriate cases. Such a jurisdiction cannot be exercised at the whims and caprice of a Judge.”*

-
33. *The long line of judicial pronouncements of this Court recognised in no uncertain terms a paradigm shift in the approach towards victims of crimes who were held entitled to reparation, restitution or compensation for loss or injury suffered by them. This shift from retribution to restitution began in the mid-1960s and gained momentum in the decades that followed. Interestingly the clock appears to have come full circle by the lawmakers and courts going back in a great measure to what was in ancient times common place. Harvard Law Review (1984) in an article on Victim Restitution in Criminal Law Process: A Procedural Analysis sums up the historical perspective of the concept of restitution in the following words:*

“Far from being a novel approach to sentencing, restitution has been employed as a punitive sanction throughout history. In ancient societies, before the conceptual separation of civil and criminal law, it was standard practice to require an offender to reimburse the victim or his family for any loss caused by the offense. The primary purpose of such restitution was not to compensate the victim, but to protect the offender from violent retaliation by the victim or the community. It was a means by which the offender could buy back the peace he had broken. As the State gradually established a monopoly over the institution of punishment, and a division between civil and criminal law emerged, the victim’s right to compensation was incorporated into civil law.”

46. *The amendments to Cr.PC brought about in 2008 focused heavily on the rights of victims in a criminal trial, particularly in trials relating to sexual offences. Though the 2008 amendments left Section 357 unchanged, they introduced Section 357-A under which the Court is empowered to direct the State to pay compensation to the victim in such cases where*

“the compensation awarded under Section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated”.

Under this provision, even if the accused is not tried but the victim needs to be rehabilitated, the victim may request the State or District Legal Services Authority to award him/her compensation. This provision was introduced due to the recommendations made by the Law Commission of India in its 152nd and 154th Reports in 1994 and 1996 respectively. 48. The question then is whether the plenitude of the power vested in the courts under Sections 357 and 357-A, notwithstanding, the courts can simply ignore the provisions or neglect the exercise of a power that is primarily meant to be exercised for the benefit of the victims of crimes that are so often committed though less frequently punished by the courts. In other words, whether courts have a duty to advert to the question of awarding compensation to the victim and record reasons while granting or refusing relief to them?

49. *The language of Section 357 CrPC at a glance may not suggest that any obligation is cast upon a court to apply its mind to the question of compensation. Sub-section (1) of Section 357 states that the Court “may” order for the whole or any part of a fine recovered to be applied towards compensation in the following cases:*

- (i) To any person who has suffered loss or injury by the offence, when in the opinion of the court, such compensation would be recoverable by such person in a civil court.
 - (ii) To a person who is entitled to recover damages under the Fatal Accidents Act, when there is a conviction for causing death or abetment thereof.
 - (iii) To a bona fide purchaser of property, which has become the subject of theft, criminal misappropriation, criminal breach of trust, cheating, or receiving or retaining or disposing of stolen property, and which is ordered to be restored to its rightful owner.
50. Sub-section (3) of Section 357 further empowers the court by stating that it “may” award compensation even in such cases where the sentence imposed does not include a fine. The legal position is, however, well established that cases may arise where a provision is mandatory despite the use of language that makes it discretionary. We may at the outset, refer to the oft-quoted passage from *Julius v. Lord Bishop of Oxford* [(1880) 5 AC 214 : (1874-80) All ER Rep 43 (HL)] wherein the Court summed up the legal position thus: (AC pp. 222-23)
- “... The words ‘it shall be lawful’ are not equivocal. They are plain and unambiguous. They are words merely making that legal and possible which there would otherwise be no right or authority to do. They confer a faculty or power, and they do not of themselves do more than confer a faculty or power. But there may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed, to exercise that power when called upon to do so.”*
54. Applying the tests which emerge from the above cases to Section 357, it appears to us that the provision confers a power coupled with a duty on the courts to apply its mind to the question of awarding compensation in every criminal case. We say so because in the background and context in which it was introduced, the power to award compensation was intended to reassure the victim that he or she is not forgotten in the criminal justice system. The victim would remain forgotten in the criminal justice system if despite the legislature having gone so far as to enact specific provisions relating to victim compensation, courts choose to ignore the provisions altogether and do not even apply their mind to the question of compensation. It follows that unless Section 357 is read to confer an obligation on the courts to apply their mind to the question of compensation, it would defeat the very object behind the introduction of the provision.
58. This Court has through a line of cases beginning with *Hari Singh* case held that the power to award compensation under Section 357 is not ancillary to other sentences but in addition thereto. It would necessarily follow that the court has a duty to apply its mind to the question of awarding compensation under Section 357 too. Reference may also be made to the decision of this Court in *State of A.P. v. Polamala Raju* [(2000) 7 SCC 75 : 2000 SCC (Cri) 1284] wherein a three-Judge

Bench of this Court set aside a judgment of the High Court for non-application of mind to the question of sentencing. In that case, this Court reprimanded the High Court for having reduced the sentence of the accused convicted under Section 376 IPC from 10 years' imprisonment to 5 years without recording any reasons for the same. This Court said:

“9. We are of the considered opinion that it is an obligation of the sentencing court to consider all relevant facts and circumstances bearing on the question of sentence and impose a sentence commensurate with the gravity of the offence. ...

** * **

11. To say the least, the order contains no reasons, much less ‘special or adequate reasons’. The sentence has been reduced in a rather mechanical manner without proper application of mind.”

61. *Section 357 Cr.PC confers a duty on the court to apply its mind to the question of compensation in every criminal case. It necessarily follows that the court must disclose that it has applied its mind to this question in every criminal case. In Maya Devi v. Raj Kumari Batra [(2010) 9 SCC 486 : (2010) 3 SCC (Civ) 842] this Court held that the disclosure of application of mind is best demonstrated by recording reasons in support of the order or conclusion. The Court observed: (SCC p. 495, paras 28-30)*

“28. ... There is nothing like a power without any limits or constraints. That is so even when a court or other authority may be vested with wide discretionary power, for even discretion has to be exercised only along well recognised and sound juristic principles with a view to promoting fairness, inducing transparency and aiding equity.

29. What then are the safeguards against an arbitrary exercise of power? The first and the most effective check against any such exercise is the wellrecognised legal principle that orders can be made only after due and proper application of mind. Application of mind brings reasonableness not only to the exercise of power but to the ultimate conclusion also. Application of mind in turn is best demonstrated by disclosure of the mind. And disclosure is best demonstrated by recording reasons in support of the order or conclusion .

30. Recording of reasons in cases where the order is subject to further appeal is very important from yet another angle. An appellate court or the authority ought to have the advantage of examining the reasons that prevailed with the court or the authority making the order. Conversely, absence of reasons in an appealable order deprives the appellate court or the authority of that advantage and casts an onerous responsibility upon it to examine and determine the question on its own .” (emphasis supplied)

66. *To sum up: while the award or refusal of compensation in a particular case may be within the court’s discretion, there exists a mandatory duty on the court to apply its mind to the question in every criminal case. Application of mind to the question is best disclosed by recording reasons for awarding/refusing compensation. It is*

axiomatic that for any exercise involving application of mind, the Court ought to have the necessary material which it would evaluate to arrive at a fair and reasonable conclusion. It is also beyond dispute that the occasion to consider the question of award of compensation would logically arise only after the court records a conviction of the accused. Capacity of the accused to pay which constitutes an important aspect of any order under Section 357 CrPC would involve a certain enquiry albeit summary unless of course the facts as emerging in the course of the trial are so clear that the court considers it unnecessary to do so. Such an enquiry can precede an order on sentence to enable the court to take a view, both on the question of sentence and compensation that it may in its wisdom decide to award to the victim or his/her family.”

- 14.** In **Suresh and Anr. vs. State of Haryana**, Criminal Appeal No.420/2012 decided on 28th November, 2014, it was observed:-

“14. We are of the view that it is the duty of the Courts, on taking cognizance of a criminal offence, to ascertain whether there is tangible material to show commission of crime, whether the victim is identifiable and whether the victim of crime needs immediate financial relief. On being satisfied on an application or on its own motion, the Court ought to direct grant of interim compensation, subject to final compensation being determined later. Such duty continues at every stage of a criminal case where compensation ought to be given and has not been given, irrespective of the application by the victim. At the stage of final hearing it is obligatory on the part of the Court to advert to the provision and record a finding whether a case for grant of compensation has been made out and, if so, who is entitled to compensation and how much. Award of such compensation can be interim. Gravity of offence and need of victim are some of the guiding factors to be kept in mind, apart from such other factors as may be found relevant in the facts and circumstances of an individual case. We are also of the view that there is need to consider upward revision in the scale for compensation and pending such consideration to adopt the scale notified by the State of Kerala in its scheme, unless the scale awarded by any other State or Union Territory is higher. The States of Andhra Pradesh, Madhya Pradesh, Meghalaya and Telangana are directed to notify their schemes within one month from receipt of a copy of this order. We also direct that a copy of this judgment be forwarded to National Judicial Academy so that all judicial officers in the country can be imparted requisite training to make the provision operative and meaningful.”

- 15.** In **K.A. Abbas H.S.A. vs. Sabu Joseph and anr.**³, it was observed:-

“26. From the above line of cases, it becomes very clear, that, a sentence of imprisonment can be granted for default in payment of compensation awarded under Section 357(3) CrPC. The whole purpose of the provision is to accommodate the interests of the victims in the criminal justice system. Sometimes the situation becomes such that there is no purpose served by keeping a person behind bars. Instead directing the accused to pay an amount of compensation to the victim or affected party can ensure delivery of total justice. Therefore, this grant

3 (2010) 6 SCC 230

of compensation is sometimes in lieu of sending a person behind bars or in addition to a very light sentence of imprisonment. Hence on default of payment of this compensation, there must be a just recourse. Not imposing a sentence of imprisonment would mean allowing the accused to get away without paying the compensation and imposing another fine would be impractical as it would mean imposing a fine upon another fine and therefore would not ensure proper enforcement of the order of compensation. While passing an order under Section 357(3), it is imperative for the courts to look at the ability and the capacity of the accused to pay the same amount as has been laid down by the cases above, otherwise the very purpose of granting an order of compensation would stand defeated."

16. In the present case, in the absence of any evidence about the medical expenses, loss of earning etc. and the financial capacity of the accused, we are of the view that the appellant needs to be paid a sum of Rs.50,000/- as compensation under Section 357(3) within two months by the surviving respondents. In default the surviving respondents will undergo rigorous imprisonment for three months. Since compensation is being directed to be paid, we set aside the sentence of fine of Rs.5,000/-.

Accordingly, the appeal is allowed in above terms.

(T.S. THAKUR)

(ADARSH KUMAR GOEL)

NEW DELHI

JANUARY 16, 2015

□□□

Suresh & Anr. Vs. State of Haryana

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 420 OF 2012

SURESH & ANR. APPELLANTS
VERSUS
STATE OF HARYANA RESPONDENT

Coram :

(V. Gopala Gowda, Adarsh Kumar Goel, JJ)

JUDGMENT

ADARSH KUMAR GOEL J.

1. This appeal has been preferred against conviction and sentence of the appellants under Sections 302 read with Sections 34, 364-A, 201 and 120-B of the Indian Penal Code.
2. Case of the prosecution is that on 18th December, 2000, the deceased Devender Chopra and his son deceased Abhishek Chopra had left their factory for their house in D.L.F., Gurgaon but did not reach their house. At about 9.41 P.M., PW-12 Pooja Chopra, daughter of Devender Chopra gave a call to her father to find out as to why he was late. She learnt that her father and brother had been kidnapped and ransom of rupees fifty lacs was demanded for their release. She contacted her father's business partner informing him that Devender Chopra and Abhishek Chopra were kidnapped and the kidnappers had demanded a ransom amount of rupees fifty lacs on telephone. The kidnappers also talked to the wife of the deceased Devender Chopra at 11 P.M. demanding ransom money. Raman Anand also talked to Devender Chopra. There were frequent calls from the kidnappers from the morning of 19th December, 2000 which were recorded on audio cassettes EX. P1 to P9. Since, the family could not fulfil the demand and offer to pay rupees ten lacs was not accepted by the kidnappers but negotiations continued. The police was not informed on account of the fear that the victims may be killed as was threatened. When the kidnappers did not release Devender Chopra and Abhishek Chopra, and finding no way out, the matter was reported to the police on 24th December, 2000 at 5 A.M. Statement of PW-2, Raman Anand EX. PC was recorded by Inspector Randhir Singh (PW-17) who deputed police officials at nearby STD booths. PW-14, SI Rajender Singh found the accused at STD booth Jawala Petrol Pump on Jaipur Highway at 8.15 A.M. He overheard accused Manmohan telling accused Suresh that ransom demand be not reduced below rupees twenty five lacs. He was in plain clothes and gave signal to PW-17 and the accused were apprehended. A slip EX. P-35 carrying residential phone number of Devender Chopra was recovered from Manmohan. Ashok accused made disclosure statement EX. PS that Devender Chopra and Abhishek Chopra had been killed and their bodies thrown in gutters in Sectors-39 and 46. Mobile of Devender Chopra was kept concealed in the house of the accused. Accused Manmohan made similar disclosure statement EX. PT and that he had kept concealed car of the deceased in his house at Palwal and a knife in his rented house at Sohna. Accused Suresh made similar disclosure statement EX. PJ and that he had concealed mobile of the deceased at the shop of his brother at Sohna. Accused Mahesh made similar disclosure

statement EX. PV and that suitcase of the deceased was concealed in his old house. Accordingly, recoveries were effected. Post mortem of dead bodies was conducted and other steps for investigation were completed.

3. After investigation, the accused were sent up for trial. The prosecution examined Dr. B.K. Rajora (PW-1), complainant Raman Anand (PW-2), Mrs. Vivek Bharti, Additional Chief Judicial Magistrate, Bhiwani (PW-3), Head Constable Naresh Kumar (PW-6), Sub Inspector Balwan Singh (PW-7), Mahabir Singh (PW-8), Assistant Sub Inspector Budh Ram (PW-9), Surender Singh Rahman (PW-10), Head Constable Mohan Lal (PW-11), Pooja Chopra (PW-12), Sub Inspector Sanjeev Kumar (PW-13), Sub Inspector Rajender Singh (PW-14), Brij Bhushan Mehta (PW-15), Sub Inspector Shakuntla (PW-16) and Inspector Randhir Singh (PW-17) and produced documents and material exhibits. The accused denied the prosecution allegations.
4. After considering the evidence on record the trial Court convicted and sentenced the appellants for kidnapping and murder and concealing evidence in conspiracy and by common intention. All the accused stand sentenced to undergo imprisonment for life and other lesser sentences which have been affirmed by the High Court.
5. We have heard learned counsel for the parties.
6. Learned counsel for the appellants submitted that there was no legal evidence to sustain the conviction and that the evidence of disclosure statements and recoveries was not reliable.
7. Learned counsel for the State opposed the above statement and pointed out that the dead bodies were recovered at the instance of the appellants, apart from the recovery of car and personal belongings of the deceased. SI Rajender Singh (PW-14) and Inspector Randhir Singh (PW-17) had overheard the conversation of the accused making demand of ransom on telephone at the STD Booth. The accused refused to give their voice sample as recorded in the Order dated 1st January, 2001 passed by the Additional Chief Judicial Magistrate, Gurgaon on application (Exhibit PF). Pooja Chopra (PW-12) deposed that the deceased Devender Chopra had a talk with her mother on 18th December, 2000 that the deceased had been kidnapped for ransom which was followed up by further conversation with the kidnappers. Raman Anand (PW-2) also had talks with the kidnappers from the mobile phone of his friend Neeraj. According to the post mortem reports, the death of Devender Chopra was on account of strangulation and cutting of throat by sharp weapon. Death of Abhishek Chopra was on account of stab injuries in chest and abdomen and the head injury caused by blunt force impact.
8. Apart from the above, this is a case where Section 106 of the Evidence Act is clearly attracted which requires the accused to explain the facts in their exclusive knowledge. No doubt, the burden of proof is on the prosecution and Section 106 is not meant to relieve it of that duty but the said provision is attracted when it is impossible or it is proportionately difficult for the prosecution to establish facts which are strictly within the knowledge of the accused. Recovery of dead bodies from covered gutters and personal belongings of the deceased from other places disclosed by the accused stood fully established. It casts a duty on the accused as to how they alone had the information leading to recoveries which was admissible under Section 27 of the Evidence Act. Failure of the accused to give

an explanation or giving of false explanation is an additional circumstance against the accused as held in number of judgments, including **State of Rajasthan vs. Jaggu Ram**¹.

9. In view of the above, we do not find any ground to interfere with the conviction and sentence of the appellants. The appellants are on bail. They may be taken into custody for undergoing the remaining sentence.
10. We had asked learned counsel for the parties to make their submissions as to applicability of Section 357A of the Code of Criminal Procedure providing for compensation by the State to the victims of the crime and also requested Shri L. Nageshwara Rao, Additional Solicitor General of India to assist the Court on this aspect.
11. Accordingly, Shri Rao has made his submissions and also furnished a written note of his submissions mentioning the legislative history and purpose of the said provision and the guidelines for determining the quantum of compensation and the power of Court to grant the interim compensation. We place on record our appreciation for the valuable contribution of Shri Rao.
12. It would now be appropriate to deal with the issue. The provision has been incorporated in the Cr.P.C. vide Act V of 2009 and the amendment duly came into force in view of the Notification dated 31st December, 2009. The object and purpose of the provision is to enable the Court to direct the State to pay compensation to the victim where the compensation under Section 357 was not adequate or where the case ended in acquittal or discharge and the victim was required to be rehabilitated. The provision was incorporated on the recommendation of 154th Report of Law Commission. It recognises compensation as one of the methods of protection of victims. The provision has received the attention of this Court in several decisions including **Ankush Shivaji Gaikwad vs. State of Maharashtra**², **In Re: Indian Woman says gang-raped on orders of Village Court published in Business and Financial News**³, **Mohammad Haroon vs. Union of India**⁴ and **Laxmi vs. Union of India**⁵. In **Abdul Rashid vs. State of Odisha & Ors.**⁶, to which one of us (Goel, J.) was party, it was observed:-

“6. Question for consideration is whether the responsibility of the State ends merely by registering a case, conducting investigation and initiating prosecution and whether apart from taking these steps, the State has further responsibility to the victim. Further question is whether the Court has legal duty to award compensation irrespective of conviction or acquittal. When the State fails to identify the accused or fails to collect and present acceptable evidence to punish the guilty, the duty to give compensation remains. Victim of a crime or his kith and kin have legitimate expectation that the State will punish the guilty and compensate the victim. There are systemic or other failures responsible for crime remaining unpunished which need to be addressed by improvement in quality and integrity of those who deal with investigation and prosecution, apart from improvement of infrastructure but punishment of guilty is not the only step in providing justice to victim. Victim expects a mechanism for rehabilitative measures, including monetary compensation. Such

1 (2008) 12 SCC 51

2 (2013) 6 SCC 770

3 (2014) 4 SCC 786

4 (2014) 5 SCC 252

5 (2014) 4 SCC 427

6 (2014) 1 ILR-CUT-202

compensation has been directed to be paid in public law remedy with reference to Article 21. In numerous cases, to do justice to the victims, the Hon'ble Supreme Court has directed payment of monetary compensation as well as rehabilitative settlement where State or other authorities failed to protect the life and liberty of victims. For example, *Kewal Pati Vs. State of U.P.* (1995) 3 SCC 600 (death of prisoner by co-prisoner), *Supreme Court Legal Aid Committee Vs. State of Bihar*, (1991) 3 SCC 482 (failure to provide timely medical aid by jail authorities, Chairman, Rly. Board Vs. Chandrima Das, (2000) 2 SCC 465 (rape of Bangladeshi national by Railway staff), *Nilabati Behera Vs. State of Orissa*, (1993) 2 SCC 746 (Custodial death), *Khatri (I) Vs. State of Bihar* (1981) 1 SCC 623 (prisoners' blinding by jail staff), *Union Carbide Corporation Vs. Union of India*, (1989) 1 SCC 674 (gas leak victims).

7. Expanding scope of Article 21 is not limited to providing compensation when the State or its functionaries are guilty of an act of commission but also to rehabilitate the victim or his family where crime is committed by an individual without any role of the State or its functionary. Apart from the concept of compensating the victim by way of public law remedy in writ jurisdiction, need was felt for incorporation of a specific provision for compensation by courts irrespective of the result of criminal prosecution. Accordingly, Section 357A has been introduced in the Cr.P.C. and a Scheme has been framed by the State of Odisha called "The Odisha Victim Compensation Scheme, 2012". Compensation under the said Section is payable to victim of a crime in all cases irrespective of conviction or acquittal. The amount of compensation may be worked out at an appropriate forum in accordance with the said Scheme, but pending such steps being taken, interim compensation ought to be given at the earliest in any proceedings.

8. In *Ankush Vhivaji Gaikwad Vs. State of Maharashtra*, (2013) 6 SCC 770, the matter was reviewed by the Hon'ble Supreme Court with reference to development in law and it was observed :

"33. The long line of judicial pronouncements of this Court recognised in no uncertain terms a paradigm shift in the approach towards victims of crimes who were held entitled to reparation, restitution or compensation for loss or injury suffered by them. This shift from retribution to restitution began in the mid 1960s and gained momentum in the decades that followed. Interestingly the clock appears to have come full circle by the law makers and courts going back in a great measure to what was in ancient times common place. *Harvard Law Review* (1984) in an article on "Victim Restitution in Criminal Law Process: A Procedural Analysis" sums up the historical perspective of the concept of restitution in the following words:

"Far from being a novel approach to sentencing, restitution has been employed as a punitive sanction throughout history. In ancient societies, before the conceptual separation of civil and criminal law, it was standard practice to require an offender to reimburse the victim or his family for any loss caused by the offense. The primary purpose of such restitution was not to compensate the victim, but to protect the offender from violent retaliation by the victim or the community. It was

a means by which the offender could buy back the peace he had broken. As the state gradually established a monopoly over the institution of punishment, and a division between civil and criminal law emerged, the victim's right to compensation was incorporated into civil law."

34. *With modern concepts creating a distinction between civil and criminal law in which civil law provides for remedies to award compensation for private wrongs and the criminal law takes care of punishing the wrong doer, the legal position that emerged till recent times was that criminal law need not concern itself with compensation to the victims since compensation was a civil remedy that fell within the domain of the civil Courts. This conventional position has in recent times undergone a notable sea change, as societies world over have increasingly felt that victims of the crimes were being neglected by the legislatures and the Courts alike. Legislations have, therefore, been introduced in many countries including Canada, Australia, England, New Zealand, Northern Ireland and in certain States in the USA providing for restitution/ reparation by Courts administering criminal justice.*
35. *England was perhaps the first to adopt a separate statutory scheme for victim compensation by the State under the Criminal Injuries Compensation Scheme, 1964. Under the Criminal Justice Act, 1972 the idea of payment of compensation by the offender was introduced. The following extract from the Oxford Handbook of Criminology (1994 Edn., p.1237-1238), which has been quoted with approval in Delhi Domestic Working Women's Forum v. Union of India and Ors. (1995) 1 SCC 14 is apposite: (SCC pp.20-21, para-16)*

"16.....Compensation payable by the offender was introduced in the Criminal Justice Act 1972 which gave the Courts powers to make an ancillary order for compensation in addition to the main penalty in cases where 'injury', loss, or damage' had resulted. The Criminal Justice Act 1982 made it possible for the first time to make a compensation order as the sole penalty. It also required that in cases where fines and compensation orders were given together, the payment of compensation should take priority over the fine. These developments signified a major shift in penology thinking, reflecting the growing importance attached to restitution and reparation over the more narrowly retributive aims of conventional punishment. The Criminal Justice Act 1982 furthered this shift. It required courts to consider the making of a compensation order in every case of death, injury, loss or damage and, where such an order was not given, imposed a duty on the court to give reasons for not doing so. It also extended the range of injuries eligible for compensation. These new requirements mean that if the court fails to make a compensation order it must furnish reasons. Where reasons are given, the victim may apply for these to be subject to judicial review....."

The 1991 Criminal Justice Act contains a number of provisions which directly or indirectly encourage an even greater role for compensation." (emphasis supplied)

36. *In the United States of America, the Victim and Witness Protection Act of 1982 authorizes a federal court to award restitution by means of monetary compensation as a part of a convict's sentence. Section 3553(a)(7) of Title 18 of the Act requires Courts to consider in every case "the need to provide restitution to any victims of the offense". Though it is not mandatory for the Court to award restitution in every case, the Act demands that the Court provide its reasons for denying the same. Section 3553(c) of Title 18 of the Act states as follows:*

"If the court does not order restitution or orders only partial restitution, the court shall include in the statement the reason thereof." (Emphasis supplied)

37. *In order to be better equipped to decide the quantum of money to be paid in a restitution order, the United States federal law requires that details such as the financial history of the offender, the monetary loss caused to the victim by the offence, etc. be obtained during a Presentence Investigation, which is carried out over a period of 5 weeks after an offender is convicted.*

38. *Domestic/Municipal Legislation apart even the UN General Assembly recognized the right of victims of crimes to receive compensation by passing a resolution titled "Declaration on Basic Principles of Justice for Victims and Abuse of Power, 1985". The Resolution contained the following provisions on restitution and compensation:*

"Restitution

8. *Offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights.*
9. *Governments should review their practices, Regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions.*
10. *In cases of substantial harm to the environment, restitution, if ordered, should include, as far as possible, restoration of the environment, reconstruction of the infrastructure, replacement of community facilities and reimbursement of the expenses of relocation, whenever such harm results in the dislocation of a community.*
11. *Where public officials or other agents acting in an official or quasi-official capacity have violated national criminal laws, the victims should receive restitution from the State whose officials or agents were responsible for the harm inflicted. In cases where the Government under whose authority the victimizing act or omission occurred is no longer in existence, the State or Government successor in title should provide restitution to the victims.*

Compensation

- 12.** *When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to:*
- (a)** *Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;*
 - (b)** *The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization.*
- 13.** *The establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including in those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm."*
- 39.** *The UN General Assembly passed a resolution titled "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 2005" which deals with the rights of victims of international crimes and human rights violations. These Principles (while in their Draft form) were quoted with approval by this Court in State of Gujarat and Anr. v. Hon'ble High Court of Gujarat (1998) 7 SCC 392 in the following words:*
- "94.** *In recent years the right to reparation for victims of violation of human rights is gaining ground. United Nations Commission of Human Rights has circulated draft Basic Principles and Guidelines on the Right to Reparation for Victims of Violation of Human Rights, (see Annexure)."*
- 40.** *Amongst others the following provisions on restitution and compensation have been made:*
- "12.** *Restitution shall be provided to reestablish the situation that existed prior to the violations of human rights or international humanitarian law. Restitution requires inter alia, restoration of liberty, family life citizenship, return to one's place of residence, and restoration of employment or property.*
- 13.** *Compensation shall be provided for any economically Assessable damage resulting from violations of human rights or international humanitarian law, such as:*
- (a)** *Physical or mental harm, including pain, suffering and emotional distress;*
 - (b)** *Lost opportunities including education;*
 - (c)** *Material damages and loss of earnings, including loss of earning potential;*
 - (d)** *Harm to reputation or dignity;*

(e) *Costs required for legal or expert assistance, medicines and medical services."*

41. *Back home the Code of Criminal Procedure of 1898 contained a provision for restitution in the form of Section 545, which stated in Sub-clause 1(b) that the Court may direct*

"payment to any person of compensation for any loss or injury caused by the offence when substantial compensation is, in the opinion of the Court, recoverable by such person in a Civil Court".

42. *The Law Commission of India in its 41st Report submitted in 1969 discussed Section 545 of the Code of Criminal Procedure of 1898 extensively and stated as follows:*

"46.12.. Section 545- Under Clause (b) of Sub-section (1) of Section 545, the Court may direct "in the payment to any person of compensation for any loss or injury caused by the offence when substantial compensation is, in the opinion of the Court, recoverable by such person in a Civil Court." The significance of the requirement that compensation should be recoverable in a Civil Court is that the act which constitutes the offence in question should also be a tort. The word "substantial" appears to have been used to exclude cases where only nominal damages would be recoverable. We think it is hardly necessary to emphasise this aspect, since in any event it is purely within the discretion of the Criminal Courts to order or not to order payment of compensation, and in practice, they are not particularly liberal in utilizing this provision. We propose to omit the word "substantial" from the clause." (Emphasis supplied)

43. *On the basis of the recommendations made by the Law Commission in the above report, the Government of India introduced the Code of Criminal Procedure Bill, 1970, which aimed at revising Section 545 and introducing it in the form of Section 357 as it reads today. The Statement of Objects and Reasons underlying the Bill was as follows:*

"Clause 365 [now Section 357] which corresponds to Section 545 makes provision for payment of compensation to victims of crimes. At present such compensation can be ordered only when the Court imposes a fine the amount is limited to the amount of fine. Under the new provision, compensation can be awarded irrespective of whether the offence is punishable with fine and fine is actually imposed, but such compensation can be ordered only if the accused is convicted. The compensation should be payable for any loss or injury whether physical or pecuniary and the Court shall have due regard to the nature of injury, the manner of inflicting the same, the capacity of the accused to pay and other relevant factors." (Emphasis supplied)

44. *As regards the need for Courts to obtain comprehensive details regarding the background of the offender for the purpose of sentencing, the Law Commission in its 48th Report on "Some Questions Under the Code of Criminal Procedure Bill, 1970" submitted in 1972 discussed the matter in some detail, stating as follows:*

“45. Sentencing- It is now being increasingly recognised that a rational and consistent sentencing policy requires the removal of several deficiencies in the present system. One such deficiency is a lack of comprehensive information as to the characteristics and background of the offender.

The aims of sentencing--themselves obscure--become all the more so in the absence of comprehensive information on which the correctional process is to operate. The public as well as the courts themselves are in the dark about judicial approach in this regard.

We are of the view that the taking of evidence as to the circumstances relevant to sentencing should be encouraged, and both the prosecution and the accused should be allowed to cooperate in the process.” (Emphasis supplied)

45. *The Code of Criminal Procedure of 1973 which incorporated the changes proposed in the said Bill of 1970 states in its Objects and Reasons that Section 357 was “intended to provide relief to the proper sections of the community” and that the amended CrPC empowered the Court to order payment of compensation by the accused to the victims of crimes “to a larger extent” than was previously permissible under the Code. The changes brought about by the introduction of Section 357 were as follows:*

(i) *The word “substantial” was excluded.*

(ii) *A new Sub-section (3) was added which provides for payment of compensation even in cases where the fine does not form part of the sentence imposed.*

(iii) *Sub-section (4) was introduced which states that an order awarding compensation may be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.*

46. *The amendments to the Code of Criminal Procedure brought about in 2008 focused heavily on the rights of victims in a criminal trial, particularly in trials relating to sexual offences. Though the 2008 amendments left Section 357 unchanged, they introduced Section 357A under which the Court is empowered to direct the State to pay compensation to the victim in such cases where*

“the compensation awarded Under Section 357 is not adequate for such rehabilitation, or where the case ends in acquittal or discharge and the victim has to be rehabilitated.”

Under this provision, even if the accused is not tried but the victim needs to be rehabilitated, the victim may request the State or District Legal Services Authority to award him/her compensation. This provision was introduced due to the recommendations made by the Law Commission of India in its 152nd and 154th Reports in 1994 and 1996 respectively.

47. *The 154th Law Commission Report on the Code of Criminal Procedure devoted an entire chapter to ‘Victimology’ in which the growing emphasis on victim’s rights in criminal trials was discussed extensively as under:*

“1. *Increasingly the attention of criminologists, penologists and reformers of criminal justice system has been directed to victimology, control of victimization and protection of victims of crimes. Crimes often entail substantive harms to people and not merely symbolic harm to the social order. Consequently the needs and rights of victims of crime should receive priority attention in the total response to crime. One recognized method of protection of victims is compensation to victims of crime. The needs of victims and their family are extensive and varied.*

XX XX XX XX XX

9.1 *The principles of victimology has foundations in Indian constitutional jurisprudence. The provision on Fundamental Rights (Part III) and Directive Principles of State Policy (Part IV) form the bulwark for a new social order in which social and economic justice would blossom in the national life of the country (Article 38). Article 41 mandates inter alia that the State shall make effective provisions for “securing the right to public assistance in cases of disablement and in other cases of undeserved want.” So also Article 51A makes it a fundamental duty of every Indian citizen, inter alia ‘to have compassion for living creatures’ and to ‘develop humanism’. If emphatically interpreted and imaginatively expanded these provisions can form the constitutional underpinnings for victimology.*

9.2 *However, in India the criminal law provides compensation to the victims and their dependants only in a limited manner. Section 357 of the Code of Criminal Procedure incorporates this concept to an extent and empowers the Criminal Courts to grant compensation to the victims.*

XX XX XX XX XX

11. *In India the principles of compensation to crime victims need to be reviewed and expanded to cover all cases. The compensation should not be limited only to fines, penalties and forfeitures realized. The State should accept the principle of providing assistance to victims out of its own funds.....”*

48. *The question then is whether the plenitude of the power vested in the Courts Under Section 357 & 357-A, notwithstanding, the Courts can simply ignore the provisions or neglect the exercise of a power that is primarily meant to be exercised for the benefit of the victims of crimes that are so often committed though less frequently punished by the Courts. In other words, whether Courts have a duty to advert to the question of awarding compensation to the victim and record reasons while granting or refusing relief to them?*

XX XX XX XX XX

66. *To sum up: While the award or refusal of compensation in a particular case may be within the Court’s discretion, there exists a mandatory duty on the Court to apply its mind to the question in every criminal case. Application of mind to the question is best disclosed by recording reasons for awarding/*

refusing compensation. It is axiomatic that for any exercise involving application of mind, the Court ought to have the necessary material which it would evaluate to arrive at a fair and reasonable conclusion. It is also beyond dispute that the occasion to consider the question of award of compensation would logically arise only after the court records a conviction of the accused. Capacity of the accused to pay which constitutes an important aspect of any order Under Section 357 Code of Criminal Procedure would involve a certain enquiry albeit summary unless of course the facts as emerging in the course of the trial are so clear that the court considers it unnecessary to do so. Such an enquiry can precede an order on sentence to enable the court to take a view, both on the question of sentence and compensation that it may in its wisdom decide to award to the victim or his/her family.

- 67.** *Coming then to the case at hand, we regret to say that the trial Court and the High Court appear to have remained oblivious to the provisions of Section 357 Code of Criminal Procedure. The judgments under appeal betray ignorance of the Courts below about the statutory provisions and the duty cast upon the Courts. Remand at this distant point of time does not appear to be a good option either. This may not be a happy situation but having regard to the facts and the circumstances of the case and the time lag since the offence was committed, we conclude this chapter in the hope that the courts remain careful in future.”*

9. In Rohtash @ Pappu Vs. State of Haryana (Crl.A. No. 250 of 1999 decided on 1.4.2008, a Division Bench of the Punjab & Haryana High Court observed:

“18. *May be, inspite of best efforts, the State fails in apprehending and punishing the guilty but that does not prevent the State from taking such steps as may reassure and protect the victims of crime. Should justice to the victims depend only on the punishment of the guilty? Should the victims have to wait to get justice till such time that the handicaps in the system which result in large scale acquittals of guilty, are removed? It can be a long and seemingly endless wait. The need to address cry of victims of crime, for whom the Constitution in its Preamble holds out a guarantee for ‘justice’ is paramount. How can the tears of the victim be wiped off when the system itself is helpless to punish the guilty for want of collection of evidence or for want of creating an environment in which witnesses can fearlessly present the truth before the Court? Justice to the victim has to be ensured irrespective of whether or not the criminal is punished.*

- 19.** *The victims have right to get justice, to remedy the harm suffered as a result of crime. This right is different from and independent of the right to retribution, responsibility of which has been assumed by the State in a society governed by Rule of Law. But if the State fails in discharging this responsibility, the State must still provide a mechanism to ensure that the victim’s right to be compensated for his injury is not ignored or defeated.*

20. *Right of access to justice under Article 39-A and principle of fair trial mandate right to legal aid to the victim of the crime. It also mandates protection to witnesses, counselling and medical aid to the victims of the bereaved family and in appropriate cases, rehabilitation measures including monetary compensation. It is a paradox that victim of a road accident gets compensation under no fault theory, but the victim of crime does not get any compensation, except in some cases where the accused is held guilty, which does not happen in a large percentage of cases.*
21. *Though a provision has been made for compensation to victims under Section 357 Cr.P.C., there are several inherent limitations. The said provision can be invoked only upon conviction, that too at the discretion of the judge and subject to financial capacity to pay by the accused. The long time taken in disposal of the criminal case is another handicap for bringing justice to the victims who need immediate relief, and cannot wait for conviction, which could take decades. The grant of compensation under the said provision depends upon financial capacity of the accused to compensate, or which, the evidence is rarely collected. Further, victims are often unable to make a representation before the Court for want of legal aid or otherwise. This is perhaps why even on conviction this provision is rarely pressed into service by the Courts. Rate of conviction being quite low, inter-alia, for competence of investigation, apathy of witnesses or strict standard of proof required to ensure that innocent is not punished, the said provision is hardly adequate to address to need of victims.*

In Hari Krishan and State of Haryana v. Sikhbir Singh AIR 1998 SC 2127, referring to provisions for compensation, the Hon'ble Supreme Court observed:-

"10. This power was intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well of reconciling the victim with the offender. It is, to some extent, a constructive approach to crimes. It is indeed a step forward in our criminal justice system. We, therefore, recommend to all Courts to exercise this power liberally so as to meet the ends of justice in a better way."

22. *It is imperative to educate the investigating agency as well as the trial Judges about the need to provide access to justice to victims of crime, to collect evidence about financial status of the accused. It is also imperative to create mechanisms for rehabilitation measures by way of medical and financial aid to the victims. The remedy in civil law of torts against the injury caused by the accused is grossly inadequate and illusory.*
23. *This unsatisfactory situation is in contrast to global developments and suggestions of Indian experts as well. Some of the significant developments in this regard may be noticed as under:-*

- 1) *UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985, highlighting the following areas:-*
 - (i) *Access to Justice and fair treatment;*
 - (ii) *Restitution;*
 - (iii) *Compensation;*
 - (iv) *Assistance.*
 - 2) *Council of Europe Recommendation on the Position of the Victim in the Framework of Criminal Law and Procedure, 1985.*
 - 3) *Statement of the Victims' Rights in the Process of Criminal Justice, issued by the European Forum for Victims' Services in 1996.*
 - 4) *European Union Framework Decision on the Standing of Victims in Criminal Proceedings.*
 - 5) *Council of Europe Recommendations on assistance to Crime victims adopted on 14.6.2006.*
 - 6) *152nd and 154th report of the Law Commission of India, 1994 and 1996 respectively, recommending introduction of Section 357-A in criminal procedure code, prescribing, inter-alia, compensation to the victims of crime.*
 - 7) *Recommendations of the Malimath Committee, 2003.*
24. *The subject matter has been dealt with by experts from over 40 countries in series of meetings and a document has been developed in cooperation with United Nations Office at Vienna, Centre for International Crime Prevention and the compilation under the heading "**Handbook on Justice for Victims**" which deals with various aspects of impact of victimization, victims assistance programmes and role and responsibility of frontline professionals and others to victims. The South African Law Commission, in its "Issue Paper 7" (1997) under the heading "Sentencing Restorative Justice: Compensation for victims of crime and victim empowerment" has deliberated on various relevant aspects of this issue.*

XX XX XX XX XX

27. *In **Malimath Committee Report** (March 2003), it was observed:-*

"6.7.1 Historically speaking, Criminal Justice System seems to exist to protect the power, the privilege and the values of the elite sections in society. The way crimes are defined and the system is administered demonstrate that there is an element of truth in the above perception even in modern times. However, over the years the dominant function of criminal justice is projected to be protecting all citizens from harm to either their person or property, the assumption being that it is the primary duty of a State under rule of law. The State does this by depriving individuals of the power to take law into their own hands and using its

power to satisfy the sense of revenge through appropriate sanctions. The State (and society), it was argued, is itself the victim when a citizen commits a crime and thereby questions its norms and authority. In the process of this transformation of torts to crimes, the focus of attention of the system shifted from the real victim who suffered the injury (as a result of the failure of the state) to the offender and how he is dealt with by the State. Criminal Justice came to comprehend all about crime, the criminal, the way he is dealt with, the process of proving his guilt and the ultimate punishment given to him. The civil law was supposed to take care of the monetary and other losses suffered by the victim. Victims were marginalized and the state stood forth as the victim to prosecute and punish the accused.

6.7.2 *What happens to the right of victim to get justice to the harm suffered? Well, he can be satisfied if the state successfully gets the criminal punished to death, a prison sentence or fine. How does he get justice if the State does not succeed in so doing? Can he ask the State to compensate him for the injury? In principle, that should be the logical consequence in such a situation; but the State which makes the law absolves itself.*

6.8.1 *The principle of compensating victims of crime has for long been recognized by the law though it is recognized more as a token relief rather than part of a punishment or substantial remedy. When the sentence of fine is imposed as the sole punishment or an additional punishment, the whole or part of it may be directed to be paid to the person having suffered loss or injury as per the discretion of the Court (Section 357 Cr.PC). Compensation can be awarded only if the offender has been convicted of the offence with which he is charged.*

XX XX XX XX XX

6.8.7 *Sympathizing with the plight of victims under Criminal Justice administration and taking advantage of the obligation to do complete justice under the Indian Constitution in defense of human rights, the Supreme Court and High Courts in India have of late evolved the practice of awarding compensatory remedies not only in terms of money but also in terms of other appropriate reliefs and remedies. Medical justice for the Bhagalpur blinded victims, rehabilitative justice to the communal violence victims and compensatory justice to the Union Carbide victims are examples of this liberal package of reliefs and remedies forged by the apex Court. The recent decisions in Nilabati Behera V. State of Orissa (1993 2 SCC 746) and in Chairman, Railway Board V. Chandrima Das are illustrative of this new trend of using Constitutional jurisdiction to do justice to victims of crime. Substantial monetary compensations have been awarded against the instrumentalities of the state for failure to protect the rights of the victim.*

6.8.8 *These decisions have clearly acknowledged the need for compensating victims of violent crimes irrespective of the fact whether*

offenders are apprehended or punished. The principle invoked is the obligation of the state to protect basic rights and to deliver justice to victims of crimes fairly and quickly. It is time that the Criminal Justice System takes note of these principles of Indian Constitution and legislate on the subject suitably.”

- 10.** *In Re: State of Assam & 2 Others (PIL (Suo Motu) No. 26/2013) vide judgement dated 24.4.2013, a Division Bench of Gauhati High Court observed :*

“We have heard learned counsel for the parties on the issue whether in absence of any prohibition under the scheme, interim compensation ought to be paid at the earliest to the victim irrespective of stage of enquiry or trial, either on application of the victim or suo motu by the Court.

In Savitri v. Govind Singh Rawat, (1985) 4 SCC 337, question of interim maintenance under Section 125 Cr.P.C. was considered and it was observed :

“3. It is true that there is no express provision in the Code which authorises a Magistrate to make an interim order directing payment of maintenance pending disposal of an application for maintenance. The Code does not also expressly prohibit the making of such an order. The question is whether such a power can be implied to be vested in a Magistrate having regard to the nature of the proceedings under Section 125 and other cognate provisions found in Chapter IX of the Code which is entitled “Order For Maintenance of Wives, Children and Parents”. Section 125 of the Code confers power on a Magistrate of the first class to direct a person having sufficient means but who neglects or refuses to maintain (i) his wife, unable to maintain herself, or (ii) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or (iii) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself or (iv) his father or mother, unable to maintain himself or herself, upon proof of such neglect or refusal, to pay a monthly allowance for the maintenance of his wife or such child, father or mother, as the case may be, at such monthly rate not exceeding five hundred rupees in the whole as such Magistrate thinks fit. Such allowance shall be payable from the date of the order, or, if so ordered from the date of the application for maintenance. Section 126 of the Code prescribes the procedure for the disposal of an application made under Section 125. Section 127 of the Code provides for alteration of the rate of maintenance in the light of the changed circumstances or an order or decree of a competent civil court. Section 128 of the Code deals with the enforcement of the order of maintenance. It is not necessary to refer to the other details contained in the abovesaid provisions.

6. In view of the foregoing it is the duty of the court to interpret the provisions in Chapter IX of the Code in such a way that the construction placed on them would not defeat the very object of the legislation. In the absence of any express prohibition, it is appropriate to construe the provisions in Chapter IX as conferring an implied power on the Magistrate to direct the person against

whom an application is made under Section 125 of the Code to pay some reasonable sum by way of maintenance to the applicant pending final disposal of the application. It is quite common that applications made under Section 125 of the Code also take several months for being disposed of finally. In order to enjoy the fruits of the proceedings under Section 125, the applicant should be alive till the - 17 - date of the final order and that the applicant can do in a large number of cases only if an order for payment of interim maintenance is passed by the court. Every court must be deemed to possess by necessary intendment all such powers as are necessary to make its orders effective. This principle is embodied in the maxim "ubi aliquid conceditur, conceditur et id sine quo res ipsa esse non potest" (Where anything is conceded, there is conceded also anything without which the thing itself cannot exist). [Vide Earl Jowitt's Dictionary of English Law, 1959 Edn., p. 1797.] Whenever anything is required to be done by law and it is found impossible to do that thing unless something not authorised in express terms be also done then that something else will be supplied by necessary intendment. Such a construction though it may not always be admissible in the present case however would advance the object of the legislation under consideration. A contrary view is likely to result in grave hardship to the applicant, who may have no means to subsist until the final order is passed. There is no room for the apprehension that the recognition of such implied power would lead to the passing of interim orders in a large number of cases where the liability to pay maintenance may not exist. It is quite possible that such contingency may arise in a few cases but the prejudice caused thereby to the person against whom it is made is minimal as it can be set right quickly after hearing both the parties. The Magistrate may, however, insist upon an affidavit being filed by or on behalf of the applicant concerned stating the grounds in support of the claim for interim maintenance to satisfy himself that there is a prima facie case for making such an order. Such an order may also be made in an appropriate case ex parte pending service of notice of the application subject to any modification or even an order of cancellation that may be passed after the respondent is heard. If a civil court can pass such interim orders on affidavits, there is no reason why a Magistrate should not rely on them for the purpose of issuing directions regarding payment of interim maintenance. The affidavit may be treated as supplying prima facie proof of the case of the applicant. If the allegations in the application or the affidavit are not true, it is always open to the person against whom such an order is made to show that the order is unsustainable. Having regard to the nature of the jurisdiction exercised by a Magistrate under Section 125 of the Code, we feel that the said provision should be interpreted as conferring power by necessary implication on the Magistrate to pass an order directing a person against whom an application is made under it to pay a reasonable sum by way of interim maintenance subject to the other conditions referred to therein pending final disposal of the application. In taking this view we have also taken note of the provisions of Section 7(2)(a) of the Family Courts Act, 1984 (Act 66 of 1984) passed recently by Parliament proposing to transfer the jurisdiction exercisable by

Magistrates under Section 125 of the Code to the Family Courts constituted under the said Act.”

*Above view has been reiterated, inter alia, in **Shail Kumari Devi v. Krishan Bhagwan Pathak**, (2008)9 SCC 632.*

We are of the view that above observations support the submission that interim compensation ought to be paid at the earliest so that immediate need of victim can be met. For determining the amount of interim compensation, the Court may have regard to the facts and circumstances of individual cases including the nature of offence, loss suffered and the requirement of the victim. On an interim order being passed by the Court, the funds available with the District/State Legal Services Authorities may be disbursed to the victims in the manner directed by the Court, to be adjusted later in appropriate proceedings. If the funds already allotted get exhausted, the State may place further funds at the disposal of the Legal Services Authorities.”

13. We are informed that 25 out of 29 State Governments have notified victim compensation schemes. The schemes specify maximum limit of compensation and subject to maximum limit, the discretion to decide the quantum has been left with the State/District legal authorities. It has been brought to our notice that even though almost a period of five years has expired since the enactment of Section 357A, the award of compensation has not become a rule and interim compensation, which is very important, is not being granted by the Courts. It has also been pointed out that the upper limit of compensation fixed by some of the States is arbitrarily low and is not in keeping with the object of the legislation.
14. We are of the view that it is the duty of the Courts, on taking cognizance of a criminal offence, to ascertain whether there is tangible material to show commission of crime, whether the victim is identifiable and whether the victim of crime needs immediate financial relief. On being satisfied on an application or on its own motion, the Court ought to direct grant of interim compensation, subject to final compensation being determined later. Such duty continues at every stage of a criminal case where compensation ought to be given and has not been given, irrespective of the application by the victim. At the stage of final hearing it is obligatory on the part of the Court to advert to the provision and record a finding whether a case for grant of compensation has been made out and, if so, who is entitled to compensation and how much. Award of such compensation can be interim. Gravity of offence and need of victim are some of the guiding factors to be kept in mind, apart from such other factors as may be found relevant in the facts and circumstances of an individual case. We are also of the view that there is need to consider upward revision in the scale for compensation and pending such consideration to adopt the scale notified by the State of Kerala in its scheme, unless the scale awarded by any other State or Union Territory is higher. The States of Andhra Pradesh, Madhya Pradesh, Meghalaya and Telangana are directed to notify their schemes within one month from receipt of a copy of this order. We also direct that a copy of this judgment be forwarded to National Judicial Academy so that all judicial officers in the country can be imparted requisite training to make the provision operative and meaningful.
15. In the present case, the impugned judgment shows that the de facto complainant, PW-2 Raman Anand, filed Criminal Revision No.1477 of 2004 for compensation to the family

members of deceased Devender Chopra and his son Abhishek Chopra. The same has been dismissed by the High Court without any reason. In fact even without such petition, the High Court ought to have awarded compensation. There is no reason as to why the victim family should not be awarded compensation under Section 357-A by the State. Thus, we are of the view that the State of Haryana is liable to pay compensation to the family of the deceased. We determine the interim compensation payable for the two deaths to be rupees ten lacs, without prejudice to any other rights or remedies of the victim family in any other proceedings.

16. Accordingly, while dismissing the appeal, we direct that the widow of Devender Chopra, who is mother of deceased Abhishek Chopra representing the family of the victim be paid interim compensation of rupees ten lacs. It will be payable by the Haryana State Legal Services Authority within one month from receipt of a copy of this order. If the funds are not available for the purpose with the said authority, the State of Haryana will make such funds available within one month from the date of receipt of a copy of this judgment and the Legal Services Authority will disburse the compensation within one month thereafter. The appeal stands disposed of accordingly.

V. GOPALA GOWDA
ADARSH KUMAR GOEL

NEW DELHI

November 28, 2014

□□□

Parivartan Kendra v/s Union of India and others

In the Supreme Court of India
Civil Original Jurisdiction

Writ Petition (Civil) No. 867 Of 2013

Parivartan KendraAppellant(s)
versus
Union of India and othersRespondent(s)

Coram :
(M.Y. Eqbal, C. Nagappan, JJ)

JUDGMENT

M.Y. EQBAL, J.:

By way of present writ petition filed in public interest under Article 32 of the Constitution of India, the petitioner – a registered NGO seeks to highlight the plight of the acid attack victims and the inadequacy how the compensation payable to the victims as per the orders of the Apex Court in ***Laxmi vs. Union of India*** (in Writ Petition (Crl.) No.129 of 2006). Petitioner also highlights the lack of a legal guarantee to free medical care, rehabilitative services or adequate compensation under the Survivor Compensation Schemes.

2. The petitioner highlighting the plight of two dalit girls of Bihar, who were attacked around midnight of October 21, 2012 by four assailants who threw acid on the face and bodies of the girls while they were sleeping on their rooftops. It is alleged that these young assailants used to harass the elder sister on the streets, market and in the auto rickshaw while she was going to computer classes or to work. This victim wanted to be a computer engineer and used to go to college regularly and supported her family working as a daily wage worker. However, these assailants used to make sexual advances towards her, pass lewd comments, and also used to pull her dupatta. They terrorized her and her family members by roaming near her house on their motorcycles, tore the curtains of their house and told her that if she did not heed to their demands and agree to have sexual relations with them they would damage and destroy her face.
3. In the aforesaid midnight, while both sisters were sleeping, assailants Anil Rai, Ghanshyam Rai, Badal and Raja climbed upon the roof and Anil covered the elder sister's mouth so that she could not scream and Ghanshyam and Raja held her legs so that she could not move. When Anil Rai was pouring the acid on her body and face, the acid also fell on her sister's body and burnt her arm. After the attack, these men did not make any effort to flee as they wanted to stay and enjoy the moment. As the acid started burning the girls, the girls started screaming and crying waking up their parents, who rushed to the rooftop. Upon this, the assailants fled. The victims were rushed to the Patna Medical College and Hospital. According to the petitioner, the doctors arrived only the next morning and did not give them proper treatment and the family had to buy all the medicines on their own. Thereafter, victims' family was given Rs.2,42,000/- from the Government of Bihar for the treatment of both. It has been contended by the petitioner that till the filing of this writ petition more than Rs. 5 lakhs had already been spent on their treatment and still the victims require more treatment.

4. It has been submitted by the petitioner that proper and adequate treatment was not given to the victim. The Patna Hospital waited for more than a month to conduct elder sister's grafting surgeries. Three grafting surgeries were performed on the elder sister. It is claimed that all these three surgeries were not performed properly and that the Hospital staff and doctors mistreated the victim and their family as they belonged to a lower caste. With the help of the petitioner-Society, the victim was transferred to Safdarjung Hospital, Delhi on 5th April, 2013, where she finally received proper treatment. It has been further contended by the petitioner that the Police also arrested the four perpetrators a month after the attack in November, 2012 in response to intense pressure from social organizations and the media. On 8.2.2013, the IG of Police had made a statement in an interview that the statement of the victim would be taken under Section 164 of the Criminal Procedure Code. However, according to the petitioner, no such statement had been taken till filing of the writ petition. The victim and her family are, therefore, appalled by the treatment they have received at the hands of the Patna Hospital, the Police and the Government of Bihar.
5. By way of present writ petition, the petitioner has sought justice, compensation and restoration of dignity of the survivors of the acid attack, and also the assurance that these horrific events are not repeated elsewhere. It is contended that despite orders and directions of the Apex Court in **Laxmi's case** (supra), acid is still readily available to most of the population in India and the acid attackers are living with impunity, and the victims are not in a position to afford basic care or services. Since buying acid is simple, it is being used to settle most minor disputes. An acid attack survivor needs surgeries throughout his/her lifetime with each surgery costing around Rs.3 lakhs. It has been further pleaded by the petitioner that this crime is mainly committed in four countries of the world, namely, Bangladesh, Pakistan, Cambodia and India. All the other three countries have engaged in paving the way to an effective remedy for the survivors of the victims. Petitioner contends that Bangladesh passed a law in 2002, which is much stronger law than the Indian Law as Indian Law neither effectively address the gravity of acid attacks nor does it adequately help the acid attack survivors.
6. The petitioner submits that the failure of the States to provide compensation under Survivor Compensation Schemes have caused the survivors to be isolated from all sections of society as they are unable to leave their house because of their disfigurements. The compensation of Rs. 3 Lakh does not cover the entire expenses incurred by an acid attack victim. The petitioner further contends that the Union of India has not developed any standard treatment and management guidelines; public health facilities etc., to treat acid attack victims. The petitioner has sought development of comprehensive rehabilitation scheme for acid attack survivors i.e., housing, education and employment.
7. The petitioner has prayed for issuance of writ of mandamus to the State of Bihar to reimburse Rs. 5 lakh to the victim's family which is the amount spent on her treatment so far and for any other expenditure incurred on the treatment of the minor sister, and to provide compensation of at least Rs.10 Lakhs to the victims' family in lieu of their pain and suffering. The petitioner has also inter alia prayed for issuance of writ of mandamus or directions to develop a standard treatment and management guidelines for the treatment and handling of acid attack victims by constituting a panel of experts; to direct all private hospitals to provide free treatment in acid attack cases and to have pictorial displays with the first aid and primary care protocols and guidelines to neutralize the acid

and stabilize the survivor in the all Public Health Centres, subcentres and government hospitals. Petitioner has also prayed for inclusion of acid attacks in the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and to reform educational programs in primary school to understand the gravity of violence against women.

8. We have heard Mr. Colin Gonsalves, learned senior counsel appearing for the petitioner, and learned counsel appearing for the Union of India, State of Bihar and other States.

9. Before we proceed further, we would like to go through the orders passed by the Apex Court in the case of W.P. (CrI.) No. 129 of 2006 titled as **Laxmi vs. Union of India**, dealing with a similar case of acid attack victim. On 18.07.2013, this Court passed the following order:

“6. *The Centre and States/Union Territories shall work towards making the offences under the Poison Act, 1919 cognizable and non-bailable.*

7. *In the States/Union Territories, where rules to regulate sale of acid and other corrosive substances are not operational, until such rules are framed and made operational, the Chief Secretaries of the concerned States/Administrators of the Union Territories shall ensure the compliance of the following directions with immediate effect:*

(i) *Over the counter, sale of acid is completely prohibited unless the seller maintains a log/register recording the sale of acid which will contain the details of the person(s) to whom acid(s) is/are sold and the quantity sold. The log/register shall contain the address of the person to whom it is sold.*

(ii) *All sellers shall sell acid only after the buyer has shown:*

a) *a photo ID issued by the Government which also has the address of the person.*

b) *specifies the reason/purpose for procuring acid.*

(iii) *All stocks of acid must be declared by the seller with the concerned Sub-Divisional Magistrate (SDM) within 15 days.*

(iv) *No acid shall be sold to any person who is below 18 years of age.*

(v) *In case of undeclared stock of acid, it will be open to the concerned SDM to confiscate the stock and suitably impose fine on such seller up to Rs. 50,000/-*

(vi) *The concerned SDM may impose fine up to Rs. 50,000/- on any person who commits breach of any of the above directions.*

8. *The educational institutions, research laboratories, hospitals, Government Departments and the departments of Public Sector Undertakings, who are required to keep and store acid, shall follow the following guidelines:*

(i) *A register of usage of acid shall be maintained and the same shall be filed with the concerned SDM.*

(ii) *A person shall be made accountable for possession and safe keeping of acid in their premises.*

- (iii)** *The acid shall be stored under the supervision of this person and there shall be compulsory checking of the students/personnel leaving the laboratories/place of storage where acid is used.*
- 9.** *The concerned SDM shall be vested with the responsibility of taking appropriate action for the breach/default/violation of the above directions.*
- 10.** *Section 357A came to be inserted in the Code of Criminal Procedure, 1973 by Act 5 of 2009 w.e.f. 31.12.2009. Inter alia, this Section provides for preparation of a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.*
- 11.** *We are informed that pursuant to this provision, 17 States and 7 Union Territories have prepared 'Victim Compensation Scheme' (for short "Scheme"). As regards the victims of acid attacks the compensation mentioned in the Scheme framed by these States and Union Territories is un-uniform. While the State of Bihar has provided for compensation of Rs. 25,000/- in such scheme, the State of Rajasthan has provided for Rs. 2 lakhs of compensation. In our view, the compensation provided in the Scheme by most of the States/Union Territories is inadequate. It cannot be overlooked that acid attack victims need to undergo a series of plastic surgeries and other corrective treatments. Having regard to this problem, learned Solicitor General suggested to us that the compensation by the States/Union Territories for acid attack victims must be enhanced to at least Rs. 3 lakhs as the after care and rehabilitation cost. The suggestion of learned Solicitor General is very fair.*
- 12.** *We, accordingly, direct that the acid attack victims shall be paid compensation of at least 3 lakhs by the concerned State Government/Union Territory as the after care and rehabilitation cost. Of this amount, a sum of Rs. 1 lakh shall be paid to such victim within 15 days of occurrence of such incident (or being brought to the notice of the State Government/ Union Territory) to facilitate immediate medical attention and expenses in this regard. The balance sum of ` 2 lakhs shall be paid as expeditiously as may be possible and positively within two months thereafter. The Chief Secretaries of the States and the Administrators of the Union Territories shall ensure compliance of the above direction."*
- 10.** *On 3rd December, 2013, in Laxmi's case (supra), when the affidavit of State of Haryana was placed before the Bench, in which it stated that the Government of Haryana is in the process of framing a scheme for full medical treatment, short term as well as long term, for specialised plastic surgery, corrective surgeries, providing specialised psychological treatment to the acid victims to help them to come out of the horror and trauma of the acid attack and their rehabilitation, this Court directed the Chief Secretaries of the States (other than Haryana) and the administrators of the Union Territories to file affidavit and indicate to this Court, the State's view in bearing 100% cost of treatment of the acid victims in line with the decision taken by the Government of Haryana and also with regard to framing of scheme on the lines of Haryana Government for medical treatment at specialised hospitals having facility for plastic surgery, corrective surgery and psychological as well as other treatment to the acid victims. This Court further directed the Chief Secretaries of the States and Administrators of the Union Territories to issue necessary instructions to the*

Police Stations within their respective State/Union Territory that as and when an FIR is lodged with the police relating to acid attack, the concerned Police Station will send a communication to the jurisdictional S.D.M. about receipt of such information. Upon receipt of such information, the jurisdictional S.D.M. shall then make inquiry into the procurement of acid by the wrong doer and take appropriate action in the matter.

11. While disposing of the writ petition of ***Laxmi versus Union of India***, this Court inter alia held, thus:-

“10. We have gone through the chart annexed along with the affidavit filed by the Ministry of Home Affairs and we find that despite the directions given by this Court in Laxmi v. Union of India (2014) 4 SCC 427], the minimum compensation of Rs. 3,00,000/- (Rupees three lakhs only) per acid attack victim has not been fixed in some of the States/Union Territories. In our opinion, it will be appropriate if the Member Secretary of the State Legal Services Authority takes up the issue with the State Government so that the orders passed by this Court are complied with and a minimum of Rs. 3,00,000/- (Rupees three lakhs only) is made available to each victim of acid attack.

11. *From the figures given above, we find that the amount will not be burdensome so far as the State Governments/Union Territories are concerned and, therefore, we do not see any reason why the directions given by this Court should not be accepted by the State Governments/Union Territories since they do not involve any serious financial implication.*

xxxxxxxx

13. *Insofar as the proper treatment, aftercare and rehabilitation of the victims of acid attack is concerned, the meeting convened on 14.03.2015 notes unanimously that full medical assistance should be provided to the victims of acid attack and that private hospitals should also provide free medical treatment to such victims. It is noted that there may perhaps be some reluctance on the part of some private hospitals to provide free medical treatment and, therefore, the concerned officers in the State Governments should take up the matter with the private hospitals so that they are also required to provide free medical treatment to the victims of acid attack.*

14. *The decisions taken in the meeting read as follows:*

- *The private hospitals will also be brought on board for compliance and the States/UTs will use necessary means in this regard.*
- *No hospital/clinic should refuse treatment citing lack of specialized facilities.*
- *First-aid must be administered to the victim and after stabilization, the victim/patient could be shifted to a specialized facility for further treatment, wherever required.*
- *Action may be taken against hospital/clinic for refusal to treat victims of acid attacks and other crimes in contravention of the provisions of Section 357C of the Code of Criminal Procedure, 1973.*

xxxxxxx

17. *We, therefore, issue a direction that the State Governments/Union Territories should seriously discuss and take up the matter with all the private hospitals in their respective State/Union Territory to the effect that the private hospitals should not refuse treatment to victims of acid attack and that full treatment should be provided to such victims including medicines, food, bedding and reconstructive surgeries.*
 18. *We also issue a direction that the hospital, where the victim of an acid attack is first treated, should give a certificate that the individual is a victim of an acid attack. This certificate may be utilized by the victim for treatment and reconstructive surgeries or any other scheme that the victim may be entitled to with the State Government or the Union Territory, as the case may be.*
 19. *In the event of any specific complaint against any private hospital or government hospital, the acid attack victim will, of course, be at liberty to take further action.*
 20. *With regard to the banning of sale of acid across the counter, we direct the Secretary in the Ministry of Home Affairs and Secretary in the Ministry of Health and Family Welfare to take up the matter with the State Governments/ Union Territories to ensure that an appropriate notification to this effect is issued within a period of three months from today. It appears that some States/Union Territories have already issued such a notification, but, in our opinion, all States and Union Territories must issue such a notification at the earliest.*
 21. *The final issue is with regard to the setting up of a Criminal Injuries Compensation Board. In the meeting held on 14.03.2015, the unanimous view was that since the District Legal Services Authority is already constituted in every district and is involved in providing appropriate assistance relating to acid attack victims, perhaps it may not be necessary to set up a separate Criminal Injuries Compensation Board. In other words, a multiplicity of authorities need not be created.*
 22. *In our opinion, this view is quite reasonable. Therefore, in case of any compensation claim made by any acid attack victim, the matter will be taken up by the District Legal Services Authority, which will include the District Judge and such other co-opted persons who the District Judge feels will be of assistance, particularly the District Magistrate, the Superintendent of Police and the Civil Surgeon or the Chief Medical Officer of that District or their nominee. This body will function as the Criminal Injuries Compensation Board for all purposes."*
12. The above mentioned direction given by this Court in Laxmi's case (supra) is a general mandate to the State and Union Territory and is the minimum amount which the State shall make available to each victim of acid attack. The State and Union Territory concerned can give even more amount of compensation than Rs.3,00,000/- as directed by this Court. It is pertinent to mention here that the mandate given by this Court in Laxmi's case

nowhere restricts the Court from giving more compensation to the victim of acid attack, especially when the victim has suffered serious injuries on her body which is required to be taken into consideration by this court. In peculiar facts, this court can grant even more compensation to the victim than Rs. 3,00,000/-.

13. We have come across many instances of acid attacks across the country. These attacks have been rampant for the simple reason that there has been no proper implementation of the regulations or control for the supply and distribution of acid. There have been many cases where the victims of acid attack are made to sit at home owing to their difficulty to work. These instances unveil that the State has failed to check the distribution of acid falling into the wrong hands even after giving many directions by this Court in this regard. Henceforth, a stringent action be taken against those erring persons supplying acid without proper authorization and also the concerned authorities be made responsible for failure to keep a check on the distribution of the acid.
14. When we consider the instant case of the victims, the very sight of the victim is traumatizing for us. If we could be traumatized by the mere sight of injuries caused to the victim by the inhumane acid attack on her, what would be the situation of the victim be, perhaps, we cannot judge. Nonetheless we cannot be oblivious of the fact of her trauma.
15. From perusal of the record of the case, it is found that elder sister suffered 28 % burns on her body and 90% on her face, owing to the alleged brutal attack on her. Due to the acid attack, the victim had undergone several surgeries, and has to undergo many more corrective and curative surgeries for her treatment.
16. Admittedly, three skin grafting surgeries were conducted by the PMCH but they were all improperly conducted as testified at Sarfdarjung Hospital. The victim, was brought to Delhi by the petitioner and in Delhi some skin grafting surgeries were again conducted at the Sarfdarjung Hospital for Neck, Lips, Eyes, Nose, Arm, Forehead and Ear. Further skin grafting surgeries were also conducted at Fortis Hospital for Neck, Lips, Nose, Eye and Arm. In the opinion of victim's doctor also, she would be required to undergo multiple corrective and curative operations and medical support for the rest of her life. Victim would be required to have corrective and curative surgeries for Neck, Lips, Eyes, Nose, Arm, Forehead, Ears, Breasts and Elbow. Apart from the above medical conditions/ treatment, which she is required to undergo, there are many other consequences, which an acid attack brings out in the life of the victim.
17. Considering the plight of the victim we can sum up that:
 - the likeliness of the victim getting a job which involves physical exertion of energy is very low.
 - the social stigma and the pain that she has to go through for not being accepted by the society cannot be neglected. Furthermore, the general reaction of loathing which she would have to encounter and the humiliation that she would have to face throughout her life cannot be compensated in terms of money.
 - as a result of the physical injury, the victim will not be able to lead a normal life and cannot dream of marriage prospects.

- since her skin is fragile due to the acid attack she would have to take care of it for the rest of her life. Therefore, the after care and rehabilitation cost that has to be incurred will have huge financial implications on her and her family.
18. On perusal of various contentions and evidence, we find it imperative to mention that even after this Court having passed an order dated 06.02.2013 directing the Union of India and States to implement compensation payable to acid attack victims by creation of a separate fund, only 17 States have been notified of the Victim Compensation Schemes (VSC). Out of which 7 states and 4 Union territories have not initiated the VSC. Even in those States where the Scheme has been implemented a meager compensation ranging between Rs.25,000/- to Rs. 2 lakhs is provided for medical care. And many States have not provided any compensation for rehabilitation at all. In the present case, the Govt. of Bihar has fixed a pitiable amount of Rs.25,000/- for the victims of acid attack.
19. The Guidelines issued by orders in the Laxmi's case are proper, except with respect to the compensation amount. We just need to ensure that these guidelines are implemented properly. Keeping in view the impact of acid attack on the victim on his social, economical and personal life, we need to enhance the amount of compensation. We cannot be oblivious of the fact that the victim of acid attack requires permanent treatment for the damaged skin. The mere amount of Rs. 3 lakhs will not be of any help to such a victim. We are conscious of the fact that enhancement of the compensation amount will be an additional burden on the State. But prevention of such a crime is the responsibility of the State and the liability to pay the enhanced compensation will be of the State. The enhancement of the Compensation will act in two ways:-
1. It will help the victim in rehabilitation;
 2. It will also make the State to implement the guidelines properly as the State will try to comply with it in its true spirit so that the crime of acid attack can be prevented in future.
20. Having regard to the problems faced by the victims, this Court in the case of **Laxmi v. Union of India & Ors** by an order dated 18.07.2013, enhanced the compensation, stating that, "**at least** Rs. 3 Lakhs must be paid to the victims of acid attacks by the concerned Government". Therefore, a minimum of Rs.3 Lakhs is to be awarded by the Government to each victim of acid attack. In the present case, a minimum amount of Rs. 6 Lakhs has to be awarded to the sisters.
21. In peculiar facts of the case, we are of the view that victim Chanchal deserves to be awarded a compensation more than what has been prescribed by this Court in the Laxmi's case (supra). Though in this case we are not issuing any guidelines different from the guidelines issued in Laxmi's case, we should not forget that the younger sister was also injured by the acid attack. Although her degree of sufferance is not as that of the elder one, but she also requires treatment and rehabilitation. It is to be noted that this Court in Laxmi's case (supra) doesn't put a bar on the Govt. to award compensation limited to Rs.3 Lakhs. The State has the discretion to provide more compensation to the victim in the case of acid attack as per Laxmi's case guidelines. It is also to be noticed that this Court has not put any condition in Laxmi's case as to the degree of injuries which a victim has suffered due to acid attack. In the instant case, the victim's father has already spent more than Rs. 5 lakhs for the treatment of the victim. In consideration of the severity of the victim's injury,

expenditure with regard to grafting and reconstruction surgery, physical and mental pain, etc., we are of the opinion that the victim (Chanchal) should be compensated to a tune of at least Rs. 10 Lakhs. Suffice it to say that the compensation must not only be awarded in terms of the physical injury, we have also to take note of victim's inability to lead a full life and to enjoy those amenities which is being robbed of her as a result of the acid attack. Therefore, this Court deems it proper to award a compensation of Rs. 10 lakhs and accordingly, we direct the concerned Government to compensate the victim Chanchal to a tune of Rs. 10 Lakhs, and in light of the Judgment given in **Laxmi's case** we direct the concerned State Government of Bihar to compensate the main victim's sister, Sonam to a tune of Rs. 3 Lakhs. Of the Total amount of Rs. 13 Lakhs, a sum of Rs. 5 lakhs shall be paid to the victim and her family within a period of one month and the remaining sum of Rs. 8 lakhs shall be paid to the victims within a period of three months from the date of this order. Furthermore, the State shall upon itself take full responsibility for the treatment and rehabilitation of the victims of acid attack as per the Guidelines provided in Laxmi's case, (2015) 5 SCALE 77, vide order dated 10.4.2015.

22. Disposing of the present writ petition, we additionally direct all the States and Union Territories to consider the plight of such victims and take appropriate steps with regard to inclusion of their names under the disability list.

M.Y. Eqbal

C. Nagappan

New Delhi

December 07, 2015

□□□

Gopi Nath Ghosh Vs. The State of Jharkhand & Anr.

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P (PIL) No. 2584 Of 2011

CAV on 6th January, 2014 Pronounced on 10th, January, 2014

Gopi Nath Ghosh Petitioner

Versus

The State of Jharkhand & Anr. Respondents

Coram:

(R. Banumathi, Apresh Kumar Singh, JJ)

JUDGMENT

R. Banumathi, C.J.

Based upon the newspaper report published in the Hindustan Times dated 24.1.2011, the petitioner has filed this Public Interest Litigation to issue writ of mandamus directing the respondents to immediately settle all claims of compensation and Government employment as per the existing schemes for civilian deaths that might have occurred in the course of violence between the State Security Forces and the Naxalities and for other directions.

2. The petitioner claims himself to be a human rights activist and to be working for the rights of workers in the unorganized sector especially for Tendu Leaf Pickers in West Singhbhum district of Jharkhand and for other human rights issues.
3. The case of the petitioner is that there are revised guidelines of the Central Scheme for assistance to civilian victims/family of victims of terrorist, communal and naxal violence dated 25.1.2010, which states that an amount of Rs.3,00,000/- (Rs.3 lakhs) would be given for each death or permanent incapacitation to the affected family under the scheme. According to the petitioner, in various districts, like West Singhbhum, East Singhbhum, Simdega, Gumla, Lohardaga, even though many persons were killed in violence between the police force and the banned armed groups, compensation and Government employments had not been granted to the families of the deceased who died as early as in 2001. The petitioner has sought and obtained information under the Rights to Information Act and has furnished in paragraph 15 of the petition the details of information as to the number of deaths and compensation disbursed. Alleging that the respondents have failed to implement the then Schemes for providing relief and rehabilitation to the victims of the violence, the petitioner has filed this PIL with the prayer that the respondents are to be directed to evolve an effective mechanism for grant of compensation and for implementation of rehabilitation measures for the victims of the violence.
4. The State of Jharkhand has filed a detailed supplementary counter-affidavit stating that the State of Jharkhand is committed for payment of ex gratia to the victims or their dependents who died/injured in Naxal violence. Referring to the schemes of the State Government and also the Central Government schemes, it is stated that during 2009-10, there were 64 reported cases of civilian death/injury in Naxal violence and during the year 2010-11, there were 96 reported cases of civilian deaths/injury and in such cases (64 + 96), compensation has been paid to all the victims/dependents as per the scheme prevalent

on the date of incident. It is further stated that the State of Jharkhand is very sincere and conscientious with respect to payment of compensation to the victims/dependents of Naxal violence and that the State Government is regularly paying compensation to the victims of Naxal violence as per the policy decision of the State of Jharkhand and has paid crores of rupees as compensation and therefore, this Public Interest Litigation is liable to be dismissed.

5. We have heard learned counsel for the petitioner, Mr.Anup Kumar Agrawal, and Mr.Rajiv Ranjan Mishra, learned GP – II, for the respondent-State of Jharkhand.
6. It is seen from the supplementary counter-affidavit that on the date creation of the State of Jharkhand (i.e. on 15.11.2000), only the State Government had policy to grant compensation to the victims/dependents of Naxal violence as per the circular of the State of Bihar No.1972 dated 9.8.2000, by which provision had been made for payment of compensation of Rs.50,000/- to the victims of Naxal violence/dependents. After creation of the State of Jharkhand, the Government of Jharkhand issued circular no.3002 dated 8.11.2001 by which provision has been made for payment of compensation of Rs.50,000/- in case of death, Rs.10,000/- in case of permanent disability and Rs.2000/- in case of serious injury to the victims of Naxal violence or their dependents and the said circular was effective for Naxal incidents occurred between 8.11.2001 and 16.2.2006. The State of Jharkhand had issued another circular no.423 dated 16.2.2006, wherein provision had been made for payment of Rs.1,00,000/- in case of death, Rs.50,000/- in case of permanent disability and Rs.10,000/- in case of serious injury as compensation to the victims of Naxal violence or their dependents and the said circular was effective for Naxal incidents occurred between 16.2.2006 and to date. According to the respondent-State, during the said period, compensation has been paid to the victims as per the said circular of the State Government.
7. Central Government, vide letter no.11044/11/2011-VTV dated 29.6.2012, issued guidelines with effect from 22.6.2009, wherein provision has been made for payment of Rs.3,00,000/- in case of death/permanent incapacitation (50% and above) as compensation to the affected family under the scheme and the said amount of compensation will be paid by the Central Government. As per the said circular, in case the employment is given to any family member of a victim of terrorism/Naxal violence, the dependent will not be entitled to the assistance under the scheme. It further provided that in case, employment has already been given after release of assistance under the scheme, the assistance amount shall not be withdrawn from the victims of Naxal violence/terrorism.
8. As per the said guidelines of the Central Government, with effect from 22.6.2009, provision has been made to constitute a District Level Committee under the chairmanship of District Magistrate/ Collector/Deputy Commissioner/District Superintendent of Police/District Medical Officer/District Welfare Officer/District Child & Women Development Officer and the officer who may be nominated by the State Government as its member and the said Committee shall identify beneficiaries and verify eligibility of the beneficiaries for assistance under the scheme. In the said guidelines of the Central Government, with effect from 22.6.2009, provision has been made for examining eligibility claims of the beneficiaries; the District Committee has to see the police report/FIR/death-cum-postmortem certificate in case of permanent incapacitation, birth certificate of the claimant (if minor) and any other documents as may be considered necessary for determining the

rightful beneficiaries/claimants. The guidelines of the Central Government provided that the District Committee shall send its recommendation to the Joint Secretary, Ministry of Home Affairs, New Delhi, in the prescribed form with a copy to the Home Department of the State Government. According to the respondents, during the said period, recommendation for payment of compensation has been made for the victims of Naxal violence as per the guidelines of the Central Government effective from 22.6.2009.

9. Circular of the Central Government, vide letter no.11044/11/2011-VTV dated 29.6.2012 (with effect from 22.6.2009), provides for the assistance to the victims of Naxal violence/terrorism. The following guidelines have been provided therein:-

“4. Eligibility

- i)** *The financial assistance would be given to the family member(s) in the event of death or permanent incapacitation of the victim, in terrorist, communal or naxal violence.*
- ii)** *Assistance would be given to the surviving spouse in case of death/permanent incapacitation of the husband or the wife, as the case may be. However, if both the husband and the wife die in same incident of violence, the family would be entitled to get the assistance, in each case.*
- iii)** *Families of the victims would be eligible to get assistance under the scheme even if they have received any other assistance, by way of payment of ex-gratia or any other type of relief from the Government or any other source except when a similar scheme is already being implemented by the Central Government.*
- iv)** *Next of kin of employees of Central Government, CPSEs, Autonomous Institutions and other Government Organizations including State Governments/State PSEs and similar organizations of State Governments will also be eligible to receive financial assistance of Rs.3 lakhs in case of death/permanent incapacitation (50% and above) on account of incidents of Terrorist/communal/naxalite violence.*
- v)** *The total compensation amount, available in the SRE states/districts would be Rs.4 lakhs(Rs.1 lakh from SRE and Rs.3 lakhs from the Central Scheme). In the other areas, the assistance would be limited to Rs.3 lakhs.*
- vi)** *Foreign Nationals and NRIs shall also be eligible/covered under the scheme w.e.f 1.4.08 i.e. the date from which this scheme has been made effective.*
- vii)** *Those permanently incapacitated, and the members of the family of the victims killed/permanently incapacitated in the terrorist, communal or naxal violence would be given a health card by the District Health Society, functioning under the National Rural Health Mission. This card would entitle them to free medical treatment in respect of injuries due to violence and all other major illnesses. Medical care will also be provided to the beneficiaries of the scheme as a special case under the on-going schemes of the Ministry of Health and Family Welfare, viz. Rashtriya Arogya Nidhi and the National Trauma Care Project.*

- viii)** *Children in the family would continue to be entitled for assistance admissible under the project „Assist“, implemented by the National Foundation for Communal Harmony (NFCH) of the MHA.*
- ix)** *No other criteria regarding income of the family would be considered for the eligibility under this scheme.*
- x)** *The perpetrators of violence or their family will not be entitled to any assistance under the scheme.*
- xi)** *The eligible claimants can file their claims in prescribed proforma (Annexure-I) within 3 years of the relevant incident of terrorist, communal or naxal violence through the concerned DM/State Government. The time limit however can be relaxed in deserving cases by the Central Government on the recommendations of the State Govt. or by the Central Government suo motu.*

5. Assistance

- i)** *An amount of Rs.3 lakh would be given for each death or permanent incapacitation to the affected family under the scheme.*
- ii)** *The amount of Rs.3 lakh would be put in a fixed deposit account [Joint or Single in the name of the Family member(s)] in a Nationalized bank. (If there is no nationalized bank within the vicinity of the beneficiary, account may be opened in any scheduled commercial bank.) It would have a minimum lock-in period of 3 years or if there are only minor children in the family, till the eldest child attains the age of majority, whichever is later.*
- iii)** *The interest on the above sum would be credited directly by the bank to the beneficiary"s saving account on a quarterly basis.*
- iv)** *At the end of the lock-in-period, the principal amount of Rs.3 lakh would be transferred directly to the saving account of the beneficiary, if the beneficiary is the spouse of the victim.*
- v)** *In case of death or permanent incapacitation of the beneficiary, his or her Next of Kin would operate the account.*
- vi)** *In case of permanent incapacitation, the victim himself/herself would be the beneficiary. However, if he/she is not in a position to operate the account, then his/her nominee would operate the account.*

6. Procedure to be followed at the District level

- i)** *A District Level Committee, under the chairmanship of District Magistrate/ Collector/Dy. Commissioner, and having as its members the District Superintendent of Police, District Medical Officer, District Social Welfare Officer, District Child and Women Development Officer and an officer who may be nominated by the State Government would identify beneficiaries and verify their eligibility for assistance under the scheme.*
- ii)** *While examining eligibility claims, the District Committee would look into the Police Report/FIR, Death-cum-Postmortem Certificate in the event of death, and Medical Certificate in the event of permanent incapacitation, birth*

certificate of the Claimant (if minor), and any other documents as considered necessary for determining the legitimate claimant.

- iii) In case of permanent incapacitation, a certificate from the District Medical Officer would be required to show that the victim has suffered 50% and above disability, which is of permanent nature and there are no chances of variation in the degree of disability, and the injury renders the victim unfit for normal life for the rest of his life.*
 - iv) In choosing the beneficiary in the family, the NOK (Next of Kin) concept would be applied.*
 - v) The District Committee will satisfy itself that the victim has suffered/died due to terrorist, communal or naxal violence, as the case may be, and the beneficiary has been identified as per the scheme. It would also verify that the victim has not suffered/died due to any incident of crime or natural reason.*
 - vi) The District Committee would, so far as possible, make its recommendation in (Annexure-II) within 15 days of receipt of claim for assistance to victims/family of terrorist or communal violence.*
 - vii) The District Collector may, on his own, recommend assistance under the scheme with suitable justification.*
 - viii) The processing of the application, as per the provisions of the scheme, shall be completed within 3 weeks, including the recommendations of the District Committee.*
 - ix) The sanction order will be issued by the DM/DC on behalf of the State Government. A copy of the sample sanction order which is presently being issued by the MHA is at annexure – III. A copy of the Sanction letter will be sent to the Home Department in the State. A copy of the sanction order will be endorsed to IS-II Division Ministry of Home Affairs New Delhi.*
 - x) The DM/DC will issue the cheque in the name of the beneficiary. Whenever feasible the assistance shall be disbursed by way of electronic transfer to the victim"s/NOK bank account.*
 - xi) The State Government shall undertake to widely disseminate information about the scheme, and to undertake its publicity.*
- 7. Procedure to be followed after the issue of cheque**
- i) The District Collector/District Magistrate/Dy. Commissioner, as the case may be, would deposit the cheque in the FD account of the beneficiary, with instructions to the Bank that no premature withdrawal may be allowed.*
 - ii) Standing instructions would be given to the Bank to credit the quarterly interest during the lock-in-period and the principal amount after the lock-in-period, directly into the account of beneficiary.*
- 8. Procedure to be followed by Ministry of Home Affairs**

- i) After the DM/DC has made the payment to the NOK of the victims of terrorist/communal/naxal violence under the Scheme, the State Government may submit the proposal to MHA for reimbursement in the prescribed proforma (Annexure-IV) on half-yearly basis (by 31st December & 30th June of each year).*
- ii) The reimbursement will be considered on the basis of audited accounts in this regard. However, to ensure that the State does not suffer because of delay in audit of accounts, ad hoc releases will be made on the basis of accounts furnished by the State Government and due scrutiny by IFD, MHA. These ad hoc payments will be adjusted after final audited accounts are made available. The Central Government will make 70% payment immediately and balance 30% after receipt of audit verification report by the Internal Audit Wing of MHA.*
- iii) The States shall ensure that the amount claimed under the Central Scheme for Assistance to civilian Victims of Terrorist, Communal and Naxal violence is not claimed under any other scheme of the Government of India i.e. there shall not be duplication of the claim. The States shall give an undertaking/certificate that no reimbursement has been claimed for these items under any other scheme.*
- iv) The revised guidelines will be applicable from the financial year 2012-13.*
- v) The State Government/UTs shall incur all expenditure (which will be reimbursed by MHA), with respect to proposals in connection with incidents which occur from April,2012 onwards. Proposals in respect of incidents which have taken place prior to April,2012 and which have not so far been sent by the State Governments to MHA will also be considered by the concerned State Governments for approval and reimbursement by MHA. The proposals which have been sent to MHA but are pending for want of complete documents from the State Government will also be considered by State Government for approval and subsequent reimbursement from MHA.*

9. Saving Clause

In case of any clarification required/difficulty faced in implementation of the scheme, suitable orders/clarifications will be issued by the Internal Security – II Division of the MHA.”

- 10.** According to the State Government, as per the above guidelines dated 29.6.2012 and also the guidelines of the Central Government issued, vide letter no.11021/1/2013-VTV dated 24.10.2013, under the Central Scheme, in deserving cases, a financial assistance of Rs.3,00,000/- is given for each death or permanent incapacitation case (disability of 50% or above) to the affected family subject to the condition that no employment has been provided to any of the family members of the victims. In the circular dated 29.6.2012, Central Government stated that the amount of compensation to be paid by the Central Government would now be paid by the State Government, which, in turn, would get it reimbursed from the Central Government. As per the said circular of the Central Government, the scheme of payment was made effective from 22.6.2009. In para (22) of the supplementary

counter-affidavit filed on 2.12.2013, the State of Jharkhand clearly stated that even for the incidents, which had taken place prior to 29.6.2009, where no payment had been made, the dependents would be covered by the new scheme. In the supplementary counter-affidavit, it is stated that out of 23 applications, payments have been made in 15 cases and 8 cases are still in the process of verification. In the supplementary counter-affidavit, the State Government has referred to the number of cases with number of applications received and also the number of case where compensation were settled as per the said scheme of compensation/Central scheme of compensation. It is stated that some of the applications are pending.

11. In the above facts and circumstances, this Public Interest Litigation is disposed of with the following directions:-
- (i) The respondents are directed to ensure strict observance of payment of compensation as per the Central Scheme, vide letter no.11044/11/2011-VTV dated 29.6.2012 and letter no.11021/1/2013-VTV dated 24.10.2013 and also as per the applicable State schemes.
 - (ii) The first respondent is directed to settle the compensation claims in respect of the pending applications in various districts and dispose of the same within a period of six months and not later than one year.
 - (iii) In future, as and when application is received claiming compensation/benefits of the Scheme, the first respondent is directed to ensure that the application is considered and disposed of within a period of six months from the date of its receipt by the respective District Magistrate/Deputy Commissioner/District Committee.
 - (iv) The first respondent is directed to circulate this order along with the Guidelines on Central Scheme for Assistance to Victims of Terrorist and Communal Violence issued vide letter No. 11044/11/2011-VTV dated 29.06.2012 (w.e.f. 22.06.2009) to Home Secretary, Director General of Police and to all the Deputy Commissioners/ Superintendents of Police, who, in turn, shall ensure its circulation to all the Sub-Divisions/Blocks/Police Stations for strict observance of the guidelines.
 - (v) The Registrar General of the High Court is directed to forward a copy of this order along with the copy of the Guidelines on Central Scheme for Assistance to Victims of Terrorist and Communal Violence issued vide letter No. 11044/11/2011-VTV dated 29.06.2012 to Jharkhand Legal Services Authority (JHALSA) and JHALSA is directed to circulate copy of this order along with the Central Scheme for Assistance to Victims of Terrorist and Communal Violence to all District Legal Services Authorities (DLSA) and also to Sub-Divisional Legal Services Committees with a direction to create awareness by holding intensive legal awareness camps at all the levels including District/Sub-Divisions/Blocks/Panchayats/Villages/ Tola/Mohalla/Basties about the Central Scheme available to the victims of terrorist and communal violence.

(R.Banumathi, C.J)

(Aparesh Kumar Singh,J)

□□□

Dhanu Ram Soren @ Bali Ram Soren Vs. State of Jharkhand

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Criminal Appeal (D.B.) No.173 of 2013

Dhanu Ram Soren @ Bali Ram Soren Appellant

Versus

State of Jharkhand Respondent

Coram:

(D.N. Patel, P.P. Bhatt, JJ)

08/Dated 4 th December, 2013

JUDGMENT

1. In pursuance of the order dated 29th November, 2013 in I.A. No. 2919 of 2013 preferred in this criminal appeal, the matter was adjourned for ascertaining as to whether Rs.10,000/-, as ordered by the Sessions Judge, Seraikella-Kharswan in Sessions Trial No. 128 of 2011 vide order dated 21st February, 2013, has been deposited or not and whether the victim has paid any compensation under the Victim Compensation Scheme floated by the State of Jharkhand under Section 357-A of the Code of Criminal Procedure.
2. Counsel appearing for the State submitted that today an affidavit has been filed by Jail Superintendent, Ghaghidih, Jamshedpur and it has been pointed out in the said affidavit that as the convict was assigned works from April, 2013 onwards and till November, 2013 he earned a sum of Rs. 5432/- (at the rate of Rs. 28/- per day)and 1/3 of which, i.e. 1811/- will go to the victim welfare fund as per circular regarding deduction and he will get the rest, i.e. Rs.3621/-, which has already been deposited in his account.
3. When this court raised a question whether any amount has been paid to the victim under the Victim Compensation Scheme, floated by the State of Jharkhand under Section 357-A of the Code of Criminal Procedure, the officer present before us appears to be not at all aware whether any compensation has been paid to the victim or not. We, therefore, direct the Secretary, Department of Home, Govt. of Jharkhand to file affidavit on the following aspects.
 - (a) How much amount the State has collected under the Victim Welfare Fund by deducting from the amount legally payable to the convicts in the jail
 - (b) What are the norms for defining unskilled, semi skilled and skilled workers because there are three different rates for payment for them, i.e. Rs. 14/-, Rs.28/- and Rs.46/- respectively. If any convict is working in the jail, what is the criteria to determine as to which of the aforesaid categories, the work assigned to him falls. When we raised this question, Jail Superintendent of Central Jail, Ghaghidih, Jamshedpur, could not answer. This ignorance is very dangerous because it will lead to discrimination. If any convict is working in the jail, then at what rate the payment shall be made for the work being carried out by the convict depends upon the nature of work and therefore, there should be certain norms to be followed to categorize the works as aforesaid otherwise there is every chance that remuneration for the works will be decided on

the whims and caprice of the Jail Superintendent or Jailor. The works and workers will be treated as unskilled, semi skilled and skilled by pick and chose method. Thus, before a Jail Superintendent or Jailor is empowered in this matter, certain norms must be set for categorisation and distribution of work, otherwise there are several persons who are undergoing sentence for the life and thus they will suffer due to the discriminatory approach of the Jail Superintendent or of the Jailor for the whole life. This is not permissible in the eye of law. Hence, we hereby, direct the Secretary, Home Department, Govt. of Jharkhand to state on affidavit as to what method of classifying the work as unskilled, semi skilled and skilled categories is to be adopted so that least will be the discretion with Jail Superintendent or the Jailor on the matter and if there already exist any norm, we request the Secretary, Home Department to bring the same in his affidavit to be filed.

- (c) At present in this court we are taking up criminal appeals of the year 2003-04. Therefore, from this trend, it appears that when there is no order for suspension of sentence passed in favour of an appellant, in a criminal appeal today, his criminal appeal might be heard approximately in the year 2025 and therefore, we hereby direct the Secretary, Department of Home, Govt. of Jharkhand to state as to how the State proposes to pay the amount of compensation to the victim in the year 2025, i.e. after several years, because the victim might not be available to receive the compensation by that time. If compensation is to be paid by the end of the disposal of the criminal appeal, the victim may not be traceable. The State, which is firstly a police state and then a welfare State, must pay the compensation initially and thereafter, amount may be recovered as per the methodology developed for the purpose by deducting a part of the remuneration from the convict while at work in jail.

The fact as to whether the State has paid any compensation to the victim under the scheme floated by the State under Section 357 A of the Cr.P.C. from April, 2013 till today, must be highlighted in the affidavit to be filed. This court wants to know whether the State is only deducting the amount from the remuneration of the convict or they are also paying the victim.

Looking to Annexure C to the affidavit filed today by the Jail Superintendent, Ghaghidih, it appears that a circular was issued on 6th July, 2012, which informs regarding creation of Victim Welfare Fund by deducting certain amount from the remuneration of the convict, which amounts to 1/3 of the total earning. How much amount is collected by the State from such deduction and what amount has been paid to the victim from the victim welfare fund shall be highlighted in the affidavit to be filed by the Department of Home, Govt. of Jharkhand. This affidavit shall be filed on or before the next date of hearing.

4. This matter is adjourned to be listed on 11th December, 2013.

D.N.Patel, J.

P.P. Bhatt, J.

□□□



Published & Distributed by :
JHARKHAND STATE LEGAL SERVICES AUTHORITY

NYAYA SADAN, Near A.G. Office

Doranda, Ranchi

Phone : 0651-2481520, Fax : 0651-2482397

Email : jhalsaranchi@gmail.com

Website : www.jhalsa.org

यह पुस्तिका झालसा के वेबसाइट "www.jhalsa.org" पर भी उपलब्ध है।